Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-1285

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v.

MICHIGAN STATE BOUNDARY COMMISSION,
Appellee,

and

CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal From the Supreme Court of Michigan

APPENDIX TO JURISDICTIONAL STATEMENT

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March, 1978

(Continued on inside cover)

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TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON,

Appellants,

v

MIDLAND COUNTY BOARD OF COMMISSIONERS, a body corporate; BEN PENNER, Midland County Clerk; GERMAINE A. SMITH, Midland Township Clerk; KENNETH W. LYBOLT, Clerk of the City of Midland,

and

CITY OF MIDLAND, a municipal corporation,

Appellees.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

Appellee,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

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STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

(Continued on inside back cover)

APPENDIX — EXHIBITS

Exhibit A Circuit Court Opinion–*Township of Midland v. Michigan State Boundary Commission* 1a

Exhibit B Circuit Court Opinion–*Township of Novi v. State of Michigan* 13a

Exhibit C Circuit Court Opinion–*Township of Brighton v. Michigan State Boundary Commission* 20a

Exhibit D Michigan Court Of Appeals Opinion– *Township of Midland v. Michigan State Boundary Commission*, 64 Mich. App. 700 (1975) 29a

Exhibit E Michigan Court Of Appeals Opinion– *Township of Novi v. State of Michigan*, 67 Mich. App. 596 (1976) 51a

Exhibit F Michigan Supreme Court Opinion– *Township of Midland v. Michigan State Boundary Commission*, 401 Mich 641 (1977) 60a

Exhibit G Application for Rehearing and Stay Order 105a

Exhibit H Michigan Supreme Court Order Denying Application for Rehearing and Stay Order 166a

Exhibit I Complete Text of Section 9 of Home Rule Cities Act, MCLA 117.9; MSA 5.2088 .... 168a

Exhibit J Affidavit Of Dr. Dennis Gilliland 173a

Exhibit K City Annexation Resolutions from January 1, 1972, to the Present, Population and Registered Voters Affected, Estimation of 100-or-less Classification 174a

Exhibit L Map of Novi 181a

Exhibit M Map of Brighton 182a

Exhibit N Map of Midland 183a

Exhibit O Government Finances of Michigan Townships 184a

Exhibit P Affidavit of Melanie Irish 187a

EXHIBIT A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF INGHAM

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan, and ROBERT B. CHATTERTON, Plaintiffs, vs. MICHIGAN STATE BOUNDARY COMMISSION, Defendant, and CITY OF MIDLAND, Intervening Defendant.	Docket No. 14598-C

OPINION OF THE COURT

This matter is submitted to the Court on briefs and after oral argument on Plaintiffs' motion for summary judgment. In their motion and brief, Plaintiffs raise essentially eight issues upon which it claims the Court can grant the relief sought. The Court will address these issues in the order presented by the parties.

I.

Was the procedure followed by the Legislature in enacting Act 219 of 1970 violative of Article IV, Secs 24 and 25, of the Michigan Constitution of 1963?

In order to understand this issue, some historical refer-

ence is necessary. Prior to 1968, procedures for the incorporation of cities and the annexation of territory thereto were governed by various provisions contained within 1909 PA 279 (the Home Rule Act), CL 117.01 *et seq.*, particularly by Sections 6, 7, 8 and 9 thereof, variously added to the Home Rule Act, and amended by 1951 PA 40; 1953 PA 173; 1955 PA 33; 1956 PA 77; 1957 PA 210; 1951 PA 58; and 1956 PA 68. However, in 1968, by the terms of 1968 PA 191, effective November 15, 1968, the Legislature passed the State Boundary Commission Act wherein they created a State Boundary Commission having responsibility, at that time, solely over proposed municipal incorporation. In turn, the State Boundary Commission Act (1968 PA 191) was not directly amended granting the State Boundary Commission authority over annexation petitions or resolutions until 1972 PA 362 effective January 9, 1973, well *after* the completion of the proceedings herein complained of. However, the Legislature did, by 1970 PA 219 effective April 1, 1971, amend the Home Rule Cities Act (1909 PA 279) and specifically Section 9 thereof, by adding, *inter alia*, the following language to Section 9 of 1909 PA 279:

"(1) In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1958, being sections 123.1001 to 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern . . .

"(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for

annexation. The commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

"(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

"(9) The provisions of section 14 shall not be applicable to an annexation approved by the commission of part of a township or village to a city except in the event of outstanding bonds or other evidences of indebtedness of the township or village. In such event, the commission shall determine and order an equitable division of assets and liabilities which relate to the bonds or other indebtedness.

"(10) The provisions of sections 8 and 8a shall not be applicable to petitions or resolutions filed with the state boundary commission.

"(11) On and after the effective date of the 1970 amendments to this section, and so long as Act No. 191 of the Public Acts of 1968 is in effect, annexation of territory from a township or village to a home rule city

shall be as provided in this section and no other means of annexation shall be effective."

The proposed annexation in dispute in this matter was a purported annexation conducted under the provisions of subsection 4 of Sec 9 of 1909 PA 279, i.e., a commission order not subject to referendum because 100 persons or less resided in the area to be annexed.

There is no question that the Legislature, by the adoption of 1970 PA 219 amending the provisions of Section 9 of 1909 PA 279, attempted to increase the powers and duties of the State Boundary Commission created by 1968 PA 191, by giving them additional "supervisory" duties over annexation matters. Plaintiffs thus contend such legislative effort is constitutionally deficient because of the provisions of Const 1963, art 4, §24, and art 4, §25, which read as follows:

"§24 No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

"§25 No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be reenacted and published at length."

In support of their contention, Plaintiffs most vigorously put forward the authority of *Alan* v *Wayne County*, 388 Mich 210 (1972), 200 NW 2d 628, the famous (or infamous) Detroit Tiger Stadium case, as well as the authority of *Mok* v *Detroit Building and Savings Association, No. 4*, 30 Mich 511 (1875). Defendants, however, in reply also rely upon

Alan, supra, and attempt to distinguish the factual situation there from the facts at hand. In light, however, of the broad language of *Alan*, the specific overruling of *Burton* v *Koch*, 184 Mich 250 (1915), therein, and the factors hereafter mentioned, Plaintiffs' position, *prior to the 1972 amendment to the Boundary Commission Act*, appears to be the better taken. We are not dealing here with a situation where, because of a special fact situation, two absolutely conflicting statutes are passed, thus requiring a judicial interpretation, but rather, succinctly put, we are dealing with a situation where the Legislature sought to do indirectly what it certainly could have done, and later did, directly, i.e., amend the State Boundary Commission Act. By amending the Home Rule Cities Act through adoption of 1970 PA 219 it conferred additional powers upon the State Boundary Commission, i.e., jurisdiction over annexations, it obviated provisions for election in proposed territories for annexation of less than 100 residents, and, *inter alia*, it limited means of annexation to the ways provided in Sec 9, 1909 PA 279. It is at least at this point where Art 4, §24, *supra*, comes into play, for neither in the title of 1909 PA 279 nor in the title of 1970 PA 219 is the object of the law, to wit, "annexation," mentioned. Rather the title reads, "An act to provide for the incorporation of cities and for revising and amending their charters." Nor does the title of 1970 PA 219 mention the conferring of additional powers over the subject of annexation on the State Boundary Commission. Rather than confer powers of home rule upon cities, 1970 PA 219 appears to substantially abrogate those powers by conferring heretofore local duties and responsibilities upon a state agency. (See *Underwood* v *McDuffee*, 15 Mich 361.)

Turning now to the question of Art 4, §25, i.e., whether or not the amendment to 1909 PA 279, adopted by 1970 PA 219, in effect amended 1968 PA 191, and, if so, whether or

not it was necessary in order to comply with Art 4, §25, of the 1963 Constitution to reenact and publish 1968 PA 921 at length, Justice Williams in his majority opinion in *Alan* has laid to rest the reasoning of *Burton* v *Koch, supra.* Mr. Justice Williams said:

> "*Burton*, on the other hand, stands for the rule that you can amend statute C by putting in statute B for the purpose of amending statute C so long as you make no specific reference to C, merely by republishing statute B under Constitution 1963, Art 4, §25, but without republishing statute C."

In our fact situation, however, specific reference was made to "statute C," though in fact there are not as many needed "cross references" as in the *Mok* case. It is clear that direct reference to the State Boundary Commission Act prior to its 1972 amendment would have in no way informed an individual that the State Boundary Commission now had jurisdiction over annexation proceedings, nor would a reference to the title of the Home Rule Cities Act in and of itself put an individual on notice that annexation proceedings were dealt with therein. Only upon close scrutiny of the amendments passed by 1970 PA 219 to Section 9 of the Home Cities Act can reference be found to the authority of the Boundary Commission in the areas of annexation. Mr. Justice Williams in his *Alan* decision at p 281 said as follows:

> "*Mok* says the Constitution requires you to do the whole job right, *Burton* says it is good enough to do the job half right. Furthermore, *Burton* says you can avoid the second half of the job of republication if you hide your purpose whereas *Mok* requires the second half of the job of republication even though you disclose your purpose.

> "This court is convinced the Constitution is not satisfied with half way measures and does not prefer dissimulation to straightforwardness. We adopt the rule of *Mok* and overrule *Burton*."

The obvious intention of the Legislature to confer new and additional duties and responsibilities upon the State Boundary Commission is apparent by the very thrust of 1970 PA 219. That the job was only half finished after the adoption of 1970 PA 219 is evident by the adoption of 1972 PA 362 in which the State Boundary Commission Act was specifically amended authorizing the Boundary Commission to exercise jurisdiction over matters of annexation of territory to a city. Again, as Mr. Justice Williams said on p 285 of *Alan*:

> "There is nothing complicated, burdensome, unreasonable or obscure about what we say here today. If a bill under consideration is intended, whether directly *or indirectly*, to revise, alter or amend the operation of previous statutes, then the Constitution, unless and until appropriately amended, requires that the Legislature do in fact what it intends to do by operation." (Emphasis added.)

In conclusion, though recognizing the authority of *Village of Kingsford* v *Cudlip*, 258 Mich 144, which held that the title of 1909 PA 279, which provided for the incorporation of villages and for revising and amending their charters was sufficient language to sustain provisions for annexation, this Court holds that, in light of *Alan* v *Wayne County*, failure of the Legislature to express the object of the Legislature to deal with the subject of 219 specifically in the title annexation, when taken in conjunction with Plaintiffs' arguments concerning Art 4, §25, i.e., amendment by reference and

without reenactment, make the adoption of 1970 PA 219 constitutionally deficient, and Plaintiffs' motion for summary judgment is granted on this ground.

II.

Sufficiency of the criteria in 1968 PA 191 for guidance

Though resolution of issue No. I requires the granting to Plaintiffs the relief prayed for, due to the controversy surrounding that issue, and the ever-present possibility of appeal, the Court will decide all other issues raised herein.

Though Plaintiff makes a compelling argument with reference to the legislative failure to establish sufficient standards and guidelines within which the State Boundary Commission shall act, this Court cannot say that the Legislature totally abrogated its responsibility in this complex area and made an improper delegation of legislative authority to the State Boundary Commission. For years the field of annexation had been fraught with local political evils, including rural-urban in-fighting, unseemly municipal rivalries, and blatant grabs for tax base. Though wide discretion is granted to the State Boundary Commission, that discretion is no longer unbridled. The act contains provisions for judicial review. Plaintiffs' motion for summary judgment on this ground is denied.

III.

The classification of "100 persons or less" provided in CL 117.9(4) does not rest upon such a difference in situation or circumstances as to constitutionally permit such a division.

Plaintiffs, though recognizing there is no absolute right to vote on questions of municipal annexation grounded upon a constitutional basis, submit that the granting of the right to vote by way of referendum on territories to be annexed of more than 100 persons and denying it to territories of less than 100 persons is arbitrary and discriminatory and a violation of the equal protection clause. Such a provision appears to this Court to be based upon a considered pragmatism and is not in and of itself constitutionally suspect. Plaintiffs' request for summary judgment on this ground is denied.

IV.

A district designed to exclude objecting voters is a gerrymander, and the Boundary Commission has a duty to take corrective action or reject a gerrymandered petition.

Plaintiffs have failed to indicate to the Court by way of either law or fact a case for the application of the concept of gerrymandering, either in its pure "geographical" sense or in a "political-economic" context. There is no indication upon the referenced record, or for that matter in Plaintiffs' brief, that the proposed annexation is so designed as to rob the township of so much of its tax base that it can no longer exist as a political entity. Plaintiffs' contentions that Defendant Boundary Commission was obliged to submit the later petition for the annexation of the entire township to the voters is unfounded, and the request for summary judgment on this ground is denied.

V.

The failure of the Boundary Commission to promulgate rules as required by the Act and the Administrative Procedures Act.

Though it is unfathomable to this Court how any administrative body can function without lawfully adopted rules governing its own proceedings, Plaintiffs have failed to point out to this Court how such a failure on the part of the State Boundary Commission has in any way prejudiced them in their presentation of their opposition to said annexation or how such failure adversely affects the decision made by the Boundary Commission. Plaintiffs' motion for summary judgment on this ground is denied.

VI.

The proceedings of the Boundary Commission are regulated by the contested case provisions of the Administrative Procedures Act, and failure to follow those provisions requires reversal of the determination.

Plaintiffs' arguments in this regard all ultimately bear upon the Plaintiffs' right to judicial review. Since that right is unquestioned and is presently being exercised, Plaintiffs have failed to point out to the Court how the agency's purported failure to treat the matter as a contested case in any way affected either the substantive or procedural rights of Plaintiff. Plaintiffs' motion for summary judgment on this ground is denied.

VII.

The provisions of 1968 PA 261 were not observed and such failure renders the Commission findings reversible.

Plaintiffs contend the Boundary Commission was required by 1968 PA 261 to hold its deliberative session in public. Without any lengthy discourse on the intended purport of 1968 PA 261, it is clear to this Court that a state administrative agency speaks through its enunciated orders encompassing findings of fact and law based upon the evidence educed at a public hearing. This Court sees no reason why the deliberative give and take of a multi-member tribunal should be made part of the public record, any more so than this individual judge's thought processes while arriving at a decision should be made part of the record. Plaintiffs' motion for summary judgment on this ground is denied.

VIII.

That the Commission ignored the criteria of Section 9 and substituted their own criteria for decision.

This ground raised by Plaintiffs really goes to the ultimate merits of the controversy. Since the early portion of this opinion makes decision on the merits unnecessary and since Plaintiffs have failed to point out where as a matter of law Defendant Commission did ignore the criteria of Section 9 and selected their own criteria for decision, Plaintiffs' motion for summary judgment on this ground is likewise denied.

CONCLUSION

For the reasons indicated herein, in subheading I, Plaintiffs' motion for summary judgment is granted, this Court having specifically denied all other grounds raised. An order in conformity with this Opinion shall enter within ten days or this Opinion shall become the final order of this Court.

DONALD L. REISIG
Circuit Judge

Dated: 9/11/73

EXHIBIT B

STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE
COUNTY OF INGHAM

TOWNSHIP OF NOVI, et al. Plaintiff vs. STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, et al. Defendant	File No. 14544-C

OPINION

The Township of Novi consists of eight (8), separate and distinct parcels. On April 23, 1971 a petition was filed with the State Boundary Commission by the City of Novi seeking to annex seven (7) of the eight (8) parcels. The area to be annexed contained approximately seventy (70) per cent of the total valuation of property in the Township. Within the seven (7) parcels there were less than 100 persons residing at the time of the filing of the petition. In the eighth parcel (not included in the petition) there were upwards of 100 persons residing.

Subsequently and before hearing on the petition to annex the seven (7) parcels to the City of Novi, there was filed with the Commission a petition to bring about the annexation of the eighth parcel. Both petitions were determined to be legally sufficient. A request made to the Commission to consolidate the two petitions for hearing and

determination was denied with the Commission holding that it ". . . can find no authority under the law . . ." for considering the annexation of the eighth parcel along with the other seven parcels of Novi Township.

MCLA 117.9(5) provides that if more than 100 persons reside in the area approved (by the Commission) for annexation referendum is available and a vote is to be taken. MCLA 117.9(4) on the other hand provides that if less than 100 persons reside in the area to be annexed the Commission's order shall not be subject to a referendum. (The Court is informed that after a later consideration and approval of the petition to annex the eighth parcel the voters overwhelmingly rejected the Commission's determination.)

Plaintiff Township, with support from intervening Plaintiffs, have moved for summary judgment setting forth numerous grounds and reasons therefor. Because this matter is determined upon certain issues it will not be necessary to here discuss or resolve the others.

I.

WAS THE PROCEDURE FOLLOWED BY THE LEGISLATURE IN ENACTING ACT 219 OF 1970 VIOLATIVE OF ARTICLE IV, SECTIONS 24 AND 25, OF THE MICHIGAN CONSTITUTION OF 1963?

This Court concludes that it was in violation of the sections of the Constitution mentioned.

The Home Rules Cities Act (Act 279 of 1909; MCLA 117.1 et seq.; MSA 5.2071 et seq.) was adopted as ". . . an act to provide for the incorporation of cities and for

revising and amending their charters." It contained, commencing at Section 6, provisions relating to annexation of territory to a city and the incorporation of new cities and consolidation of cities. Annexations were to be accomplished generally after initial petitions to boards of supervisors.

In 1968 the State Boundary Commission Act was adopted (Act 191) as ". . . an act to create a State Boundary Commission; to prescribe its powers and duties; to provide for the incorporation and consolidation of cities and villages; and to repeal certain acts and parts of acts." By this statute the legislature purported to create a State Boundary Commission with authority over incorporation and consolidation only. It did not expressly repeal any part of the Home Rule Cities Act, but provided at Section 7 that henceforth all incorporation proceedings would be produced by the State Boundary Commission under the provisions of said Act 191, rather than by the boards of supervisors.

By Act 219 of 1970 the Legislature purported to add annexations to the authority of the Commission even though the enabling portions of Act 191 did not include annexation. This Act further purported to amend Sections 6, 8, 8A, 9 and 14 of the Home Rule Cities Act. The legislature in fact only re-enacted and published at length Section 9 of the Home Rule Cities Act and did not re-publish or re-enact any of the other sections or parts of the State Boundary Commission Act.

The State Boundary Commission Act was not so amended as to expressly grant authority over annexation matters until the passage of PA 362 of 1972 (effective January 9, 1973)—a time subsequent to these proceedings.

It is apparent to the Court that the Legislature, by adopting 1970 PA 219 attempted to increase the powers and duties of the Commission.

Section 24 of Article IV of the Constitution of 1963 provides:

> "No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."

Section 25 provides:

> "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be reenacted and published at length."

Plaintiff Township relies upon *Alan* v *Wayne County,* 388 Mich 210 August 30, 1972), and this Court believes such reliance is well taken and well founded. (It would appear that the Legislature, in PA 362 of 1972, also recognized the untenable position the Commission was in prior to the enactment.)

The matter of annexation authority is not mentioned in 1909 PA 279 and it is not mentioned in 1970 PA 219. Herein lies a violation of Article IV, Section 24.

As to violation of Article IV, Section 25, it is clear that the Legislature, in enacting 1970 PA 219, did attempt to revise, alter, or amend by reference to title only and without re-enacting and publishing at length. The end result

of the Legislature's conduct is to cause one desirous of determining the law to hop, skip, and jump from one act to another—something the *Alan* court appears to be prohibiting and discouraging. This Court cannot improve upon the language or reasoning of Justice Williams as set forth in *Alan* commencing at page 268.

II.

DOES THE CLASSIFICATION OF "100 PERSONS OR LESS" IN MCLA 117.9(4) REST UPON SUCH A DIFFERENCE IN SITUATION OR CIRCUMSTANCE AS TO CONSTITUTIONALLY PERMIT SUCH DIVISION?

This Court concludes in the negative.

If one resides in an area to be annexed containing upwards of 100 persons he has the right to referendum; if he resides in an area wherein less persons reside he is barred from such right or privilege. (MCLA 117.9(4) and MCLA 117.9(5)). No reasonable basis or reason for such division appears in the statute, and none comes to mind.

Article I, Section 1 of the Michigan Constitution of 1963 provides:

> "All political power is inherent in the people. Government is instituted for their *equal* benefit, security and protection." (italics supplied)

Article I, Section 2 reads in part:

> "No person shall be denied the *equal* protection of the laws; . . ." (italics supplied)

It is argued on behalf of the Commission that the matter of establishment of municipal corporations and alterations in their territory by boundary changes are purely discretionary legislative acts within the legislative prerogative. *Village of Kingsford* v *Cudlip*, 258 Mich 144 (1932). While not denying this general proposition, still, where the legislature has seen fit to have the ultimate determination resolved by vote in *some cases* (where more than 100 persons reside in the area proposed to be annexed), hasn't the legislature then returned this area of its authority back to the residents? Why then this 100-person dividing line?

In *Bankhead* v *McEwan*, 35 Mich App 7 (1971) the Court of Appeals majority held that: "Equal protection of the law does not prevent a reasonable classification by legislative enactment . . ."; and "Legislative classification by population will be upheld where there is a reasonable relationship between the restriction and population." In numerous Michigan cases it has been held that the fundamental rule of classification for purposes of legislation is that it shall not be arbitrary, unreasonable, or capricious. *Fitzpatrick Liquor Control Commission*, 316 Mich 83; *Miller* v *Detroit Savings Bank*, 289 Mich 494 (1939); and *Baker* v *State Land Office Board*, 294 Mich 587 (1940). Classification, to be lawful, must be based on natural distinguishing characteristics, i.e. some valid distinction, or some substantial and real differences in classes. *Kelly* v *Boyne*, 239 Mich 204 (1927), *Mulloy* v *Wayne County Board of Supervisors*, 246 Mich 632 (1929), cited in *Irishman's Lot, Inc.* v *Secretary of State*, 338 Mich at 666.

No substantial or real differences in classes here appears, and no valid distinction appears to exist for this denying to some, but granting to others, the right or privilege of referenda.

For the reasons stated the motion for summary judgment in favor of Novi Township is granted, and an appropriate judgment may enter.

Dated: January 3, 1974.

JACK W. WARREN /s/
Jack W. Warren, Circuit Judge

EXHIBIT C

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF INGHAM

TOWNSHIP OF BRIGHTON, A MUNICIPAL CORPORATION IN LIVINGSTON COUNTY, MICHIGAN, AND MURIEL BEURMANN, Plaintiffs, vs. MICHIGAN STATE BOUNDARY COMMISSION, ET AL., Defendants.	File No. 15497-C

Opinion of the Court given by the Honorable Donald L. Reisig, Circuit Judge, at Lansing, Michigan, on Friday, January 4, 1974.

Lansing, Michigan
Friday, January 4, 1974

• • •

THE COURT: Counsel, I do not have a prepared decision to hand out.

MR. BAUCKHAM: I might say, we came to Judge Warren's court thinking we were going to take testimony. But, as the matter proceeded, he felt that the legal issues were dispositive. We all agreed not to take testimony. That's what happened.

THE COURT: I had assumed, in turn, as we talked earlier, that we were going to be disposing of all the issues here today. That false assumption on my part has some bearing upon what I'm going to do; it is a pragmatic bearing, because, pragmatically, we're dealing here in a complex area. Last time I knew there were what?—seven or eight of these lawsuits floating around, probably more than that—

MR. BAUCKHAM: I think it's about correct.

THE COURT: —in this circuit alone.
I think the matter is in need of resolution.

Counsel in the Midland County case attempted to get me to say things in my order which I really didn't say. No, I don't mean it that way—tried to get me to resolve issues that I did not believe were before me. I did not believe I should overreach. I may be guilty of that offense, judicial offense in this matter, because I think it's time we sent this matter, entire issues here involved, up to the Supreme Court, which adopted Alan. Let's see what they got to say about some of the issues here.

This is my Opinion, subject to the right of correction or deletion by way of adding any specific finding of fact or any authority which I may by oversight overlook: I specifically reaffirm everything said in my Opinion in the Midland County case. I shouldn't say Midland County. Midland—

MR. BAUCKHAM: Township versus —

THE COURT: —*Midland Township* versus *the City of Midland,* heretofore decided in this circuit, with reference to the constitutionality of PA 219, 1970.

Let me make it clear, that in that decision this local circuit judge did not attempt to overrule the long standing authority of *Kingsford* versus *Cudlip*. Any reference thereto, I think, is fully explained in the decision as merely one aspect of a makeweight-type of reason for that decision. There is a Home Rule Act, viable Home Rule Act.

The next point of consideration is having to reaffirm that decision. That Act 219 of 1970, for all the reasons therein stated, is unconstitutional.

What impact does that have upon this proceeding?

I asked Mr. Bauckham about whether or not the boundary commission had based its findings upon Act 362 of 1972. They certainly didn't say so in their written findings, in their written decision. In fact, they make specific reference to the other Acts but not that Act. I don't know whether that's really important or not.

The Act existed at the time they made their decision, went into effect what? Twenty-eight days before. Longer than that. Excuse me. It went into effect January 9th. Their decision, the Opinion signed by the chairman was dated 3-29-72. The other date I was thinking of was the continued hearing date.

Wasn't that February 7th?

MR. BAUCKHAM: It was in February, your Honor.

THE COURT: I think at some point the commission here could have recognized that the Act 362, 1972, had gone into effect and could have hedged their bets a little bit. They could have said, "Township, City, interested

people, come on back here. We're now going to hold a hearing under this Act."

Now, granted, if 219 of 1970 was unconstitutional and they had received the petition, they had no basis of accepting the petition, all the arguments made by Mr. Bauckham. But I think they could have saved it in some fashion. I have a strong proclivity, and I had a strong proclivity after reading the Briefs, of finding somehow in which this Act 362 of 1972 saved this proceeding. That's what I wanted to rule. Why? Because they didn't like my decision in the Midland case. I felt it was dictated by Alan. If I am wrong, I am wrong. I'll be happy to be reversed. Without Alan I wouldn't have ruled the same way, without some saving act on the part of the legislature. I cannot, however, in all intellectual honesty, say the commission, the boundary commission had the right to act upon petitions that it never would have received but for the passage of the Act that I previously ruled to be unconstitutional to-wit: 219 of 1970. There is no way that we can say they acted in contemplation of its effectiveness.

The law is clear that no law or single provision thereof can begin to speak until it takes effect, *Grant* vs. *City of Alpena*, 107 Mich 335, and numerous other decisions. I believe strong arguments can be made that the legislature could pass an act giving it re-prospective effect in this area. We're not talking about anything in which there are vested rights. Re-prospective statutes curing effects and acts done or authorizing or confirming exercise of powers are valuable where the legislature had authority to confer the power or authorize the acts except where there is an attempt to impair a vested right. Again, many authorities therefor, *Stott* vs. *Stott Realty Company*, 288 Mich 35, being a representative authority.

Now, I do not believe the fact that the last of the public hearings before the commission having come after the effective date of 362, 1972 is enough to save the action taken in this matter. The petitions were filed with the commission under an act which this court previously held to be unconstitutional. But for that act, petitions would not have been filed there, the commission would not have had the power to act at the time they acted.

I recognize in so ruling, that if we back this whole thing up again, again just as in our other case, we're confronted with dilemma. Okay? We strike down the petition because it was filed with the commission, another petition will be filed, and the commission will go through this whole process all over again. I understand there's already continuation of litigation in Midland County on the Midland County situation.

For the purpose of clarifying this matter, there's going to be a couple other aspects of my ruling, seeking clarifications, I should say. Before I say that, I just want to say this: I don't think, Mr. Bauckham,—I think I've said this in my Midland County decision case—I don't think Alan goes as far as you say it goes. We've got an honest difference of opinion. I recognize the protagonist's period don't go as far as I say it goes.

I am persuaded, upon mature reflection, that even if it could be held here that by the action of the boundary commission taken after the effective date of 362 of 1972, that in fact 362, 1972 can be applied to this fact situation, that even if it were so applied, we have problems. I, one, do not expect Mr. Bauckham's arguments that the Alan case then applies. I think Act 362 of 1972, amending Act 191 of 1968, is a complete and total Act without any of

the constitutional infirmities that Mr. Williams found in the Alan case and that I found with reference to Act 219 of 1970.

Having said that, however, we must then go on to some of the other contentions that Mr. Bauckham has raised. And, again I say upon mature reflection, I find that the standards shaped by the legislature, Section 9, are inadequate. They are not standards; they are touchstones. The legislature has delegated to the boundary commission power that except for procedural abuse is not subject to judicial review. There are no criteria for measurements in any of the actions of the boundary commission. As I believe I said in my Midland County case, Midland case: "For years the field of annexation has been fraught with political evils, including rural-urban in-fighting, unseemly municipal rivalries, and blatant grabs for tax base." The action of the legislature delegating this authority to the boundary commission fails to prescribe standards for guidance of the boundary commission sufficiently precise as the subject matter either requires or permits.

Now to make it a total package—Judge Warren says, "The matter won't come back to me"—I do not find that the decision of the boundary commission to deny the request to include the balance of the so-called B.U.G.A. area was unsupported by competent, material and substantial evidence on the whole record. Let me say that positively.

I guess I can't do it, can I, since I haven't read the record? You got me.

Let me put it this way: nothing you have pointed out in your Brief, Mr. Bauckham, in any way leads me to the

conclusion that the boundary commission abused its discretion in this regard. I have my own opinion as to what that petition entailed, what we are talking about here, and I think you gentlemen know what I'm speaking of.

Be that as it may, with reference to the classification of hundred persons or less, I'm not the Jacksonian that my brother Warren is. I do not find there are any valid contentions here of equal protection or anything of this nature or shape. I view this as a valid classification, as I believe I said earlier on pragmatic considerations.

With reference to the failure to adopt rules and regulations, I would again re-adopt and reaffirm my Opinion in the Midland case. I do not see how an agency operates without rules and regulations. But plaintiffs here have totally failed to point out to this court how the failure to have rules and regulations have in any way deprived them of fundamental due process.

As far as the contested case, I believe I know in the Administrative Procedures Act what a contested case is. I don't know whether or not the boundary commission or the attorney general considered this to be a contested case, but I think it was handled in the same fashion as a contested case. And, again, plaintiffs have failed to point out to this court how the failure to handle this as a contested case in any way affected their rights or remedies. I think one of the aspects, if it wasn't a contested case, they wouldn't be here today, and they're here today. I deny plaintiffs any relief on this ground.

Finally, with reference to PA 261, 1968, the so-called what?—open meeting provision or clause, I'm a firm believer in that type of concept. Meetings should be open to

the public. But I believe when you're talking about a quasi-judicial body or quasi-administrative body, whatever you want to call a boundary commission, those five gentlemen should have an opportunity to meet and discuss without the glare of reporters and spectators their various points of view no differently than the seven or three members of an appellate court can discuss these matters. I don't think that they had to hold their so-called adjudicative session in public.

I think I've ruled on all points. My argument is an anchor-type argument.

I accept Mr. Bauckham's and the plaintiffs' position, that having previously ruled that 219 of 1970 is unconstitutional, that in no way was this unconstitutionality cured to make the boundary commission the proper repository of the petitions heretofore filed. The boundary commission did not in fact act upon basis of 362, 1972 when they did act upon the petitions here in question, and that even if they did, Act 362 of 1972 is insufficient in that it fails to promulgate sufficient standards.

To the extent that Act 219 of 1970, which I have previously and in this case ruled unconstitutional, to the extent that that Act incorporated by reference Section 9 of the Boundary Commission Act—is that right?—yes, the standards of Section 9 of the Boundary Commission Act, PA 1968 number 191, I must also add that reason besides the Alan reason to the unconstitutionality. This is not a contention which I accepted or adopted in my Midland case.

The genesis of my reversing myself on that issue was the point that you and I, Mr. Bauckham, made in our repartee here, that those Section 9 standards were the original standards adopted for the boundary commission to govern

incorporations, and by suddenly adding the whole ambit of annexation here, I don't see how you can just use the very same standards. Yes, there are lots of similarities, but there are lots of differences. I think the legislature, just thinking upon mature reflection, only did a half a job.

An Order may enter accordingly.

I hope counsel will do it as quickly as possible so that this vehicle as well as, I assume, Judge Warren's vehicle, as well as the Midland vehicle can all reach the appellate courts at the same time, can thereby be joined for argument. I would encourage, sought to get this issue before the Supreme Court as quickly as possible.

Thank you for an orderly presentation.

MR. TOY: Thank you, your Honor.

MR. BAUCKHAM: Thank you, your Honor.

CERTIFICATE OF REPORTER

STATE OF MICHIGAN, }
COUNTY OF INGHAM } ss

I, DANIEL MORENO, Official Court Reporter within and for the county of Ingham, State of Michigan, do certify that I reported the proceedings had in the matter of Township of Brighton, et al., vs. Michigan State Boundary Commission, et al., file number 15497-C, before the Honorable Donald L. Reisig, Circuit Judge, at Lansing, Michigan, on Friday, January 4, 1974; and that the annexed and foregoing Opinion of the Court is a true and correct record of my Stenotype notes.

DANIEL MORENO /s/
DANIEL MORENO, Court Reporter

EXHIBIT D

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan, and ROBERT B. CHATTERTON, individually and as supervisor of said township, Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant, and CITY OF MIDLAND, Intervening Defendant-Appellant.	Oct. 13, 1975 Nos. 19154-19156

BEFORE: V. J. Brennan, P. J., and D. E. Holbrook and M. F. Cavanagh, JJ.

D. E. HOLBROOK, J.

These three appeals involve the same case, heard in the Circuit Court for the County of Ingham. The plaintiffs-appellees and both defendants-appellants were granted leave to appeal by our Court, each claiming that the trial court committed error in one or more of its rulings on the issues presented therein.

The instant case involves two petitions for annexation to the City of Midland. 71 AT 7 was a petition for annexation of 319 acres of the Township of Midland into the City of

Midland, and was filed with the County Board of Commissioners on February 15, 1968, and was transferred to the State Boundary Commission (SBC) on April 28, 1971, pursuant to 1970 PA 219. These 319 acres were contiguous to the City of Midland, and the site for a nuclear energy plant. 71-AR-11 was a petition to annex the remainder of the Township of Midland into the City of Midland, and was filed with the SBC May 6, 1971 under the same 1970 PA 219. Both petitions were approved by the SBC.

The Circuit Court for Ingham County granted a motion for summary judgment brought by plaintiffs, claiming that 1970 PA 219 was unconstitutional. Both defendants-appellants appeal from the summary judgment, and plaintiffs appeal claiming that the said statute is deficient for other reasons as claimed by plaintiffs in their motion for summary judgment, but which were rejected by the trial court. The trial judge in ruling on the matter wrote a very thorough opinion, which we deem advisable to set forth in full herein, *viz.*:

"This matter is submitted to the court on briefs and after oral argument on plaintiffs' motion for summary judgment. In their motion and brief, plaintiffs raise essentially eight issues upon which it claims the court can grant the relief sought. The court will address these issues in the order presented by the parties.

"I.

"Was the procedure followed by the Legislature in enacting Act 219 of 1970 violative of Article IV, Secs 24 and 25, of the Michigan Constitution of 1963?

"In order to understand this issue, some historical refer-

ence is necessary. Prior to 1968, procedures for the incorporation of cities and the annexation of territory thereto were governed by various provisions contained within 1909 PA 279 (the Home Rule Act), CL 117.01 *et seq.*, particularly by Sections 6, 7, 8 and 9 thereof, variously added to the Home Rule Act, and amended by 1951 PA 40; 1953 PA 173; 1955 PA 33; 1956 PA 77; 1957 PA 210; 1951 PA 58; and 1956 PA 68. However, in 1968, by the terms of 1968 PA 191, effective November 15, 1968, the Legislature passed the State Boundary Commission Act wherein they created a State Boundary Commission having responsibility, at that time, solely over proposed municipal incorporation. In turn, the State Boundary Commission Act (1968 PA 191) was not directly amended granting the State Boundary Commission authority over annexation petitions or resolutions until 1972 PA 362 effective January 9, 1973, well after the completion of the proceedings herein complained of. However, the Legislature did, by 1970 PA 219 effective April 1, 1971, amend the Home Rule Cities Act (1909 PA 279) and specifically Section 9 thereof, by adding, *inter alia*, the following language to Section 9 of 1909 PA 279:

"'(1) In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern . . .

"'(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying or revising a

petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

"'(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

"'(9) The provisions of section 14 shall not be applicable to an annexation approved by the commission of part of a township or village to a city except in the event of outstanding bonds or other evidences of indebtedness of the township or village. In such event, the commission shall determine and order an equitable division of assets and liabilities which relate to the bonds or other indebtedness.

"'(10) The provisions of sections 8 and 8a shall not be applicable to petitions or resolutions filed with the state boundary commission.

"'(11) On and after the effective date of the 1970 amendments to this section, and so long as Act No. 191 of the Public Acts of 1968 is in effect, annexation of territory from a township or village to a home rule city shall be as provided in this section and no other means of annexation shall be effective.'

"The proposed annexation in dispute in this matter was a purported annexation conducted under the provisions of

subsection 4 of Sec 9 of 1909 PA 279, *i.e.*, a commission order not subject to referendum because 100 persons or less resided in the area to be annexed.

"There is no question that the Legislature, by the adoption of 1970 PA 219 amending the provisions of Section 9 of 1909 PA 279, attempted to increase the powers and duties of the State Boundary Commission created by 1968 PA 191, by giving them additional 'supervisory' duties over annexation matters. Plaintiffs thus contend such legislative effort is constitutionally deficient because of the provisions of Const 1963, art 4, §24, and art 4, §25, which reads as follows:

"'§24 No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

"'§25 No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be reenacted and published at length.'

"In support of their contention, plaintiffs most vigorously put forward the authority of *Alan* v *Wayne County*, 388 Mich 210; 200 NW2d 628 (1972), the famous (or infamous) Detroit Tiger Stadium case, as well as the authority of *Mok* v *Detroit Building & Savings Association, No. 4*, 30 Mich 511 (1875). Defendants, however, in reply also rely upon *Alan, supra*, and attempt to distinguish the factual situation there from the facts at hand. In light, however, of the broad language of *Alan*, the specific overruling of *Burton* v *Koch*, 184 Mich 250; ——— NW ———

(1915), therein, and the factors hereafter mentioned, plaintiffs' position, *prior to the 1972 amendment to the Boundary Commision Act,* appears to be the better taken. We are not dealing here with a situation where, because of a special fact situation, two absolutely conflicting statutes are passed, thus requiring a judicial interpretation, but rather, succintly put, we are dealing with a situation where the Legislature sought to do indirectly what it certainly could have done, and later did, directly, *i.e.*, amend the State Boundary Commission Act. By amending the Home Rule Cities Act through adoption of 1970 PA 219 it conferred, additional powers upon the State Boundary Commission, *i.e.*, jurisdiction over annexations, it obviated provisions for election in proposed territories for annexation of less than 100 residents, and, *inter alia,* it limited means of annexation to the ways provided in Sec 9, 1909 PA 279. It is at least at this point where Art 4, §24, *supra,* comes into play, for neither in the title of 1909 PA 279 nor in the title of 1970 PA 219 is the object of the law, to wit, 'annexation,' mentioned. Rather the title reads, 'An act to provide for the incorporation of cities and for revising and amending their charters.' Nor does the title of 1970 PA 219 mention the conferring of additional powers over the subject of annexation on the State Boundary Commission. Rather than confer powers of home rule upon cities, 1970 PA 219 appears to substantially abrogate those powers by conferring heretofore local duties and responsibilities upon a state agency. (See *Underwood* v *McDuffee*, 15 Mich 361 [1867].)

"Turning now to the question of Art 4, §25, *i.e.*, whether or not the amendment to 1909 PA 279, adopted by 1970 PA 219, in effect amended 1968 PA 191, and, if so, whether or not it was necessary in order to comply with Art 4, §25, of the 1963 Constitution to reenact and publish 1968 PA

191 at length, Justice Williams in his majority opinion in *Alan* has laid to rest the reasoning of *Burton* v *Koch, supra.* Mr. Justice Williams said:

"'*Burton* on the other hand, stands for the rule that you can amend statute C by putting in statute B for the purpose of amending statute C so long as you make no specific reference to C, merely by republishing statute B under Constitution 1963, Art 4, §25, but without republishing statute C.'

"In our fact situation, however, specific reference was made to 'statute C,' though in fact there are not as many needed 'cross references' as in the *Mok* case. It is clear that direct reference to the State Boundary Commission Act prior to its 1972 amendment would have in no way informed an individual that the State Boundary Commission now had jurisdiction over annexation proceedings, nor would a reference to the title of the Home Rule Cities Act in and of itself put an individual on notice that annexation proceedings were dealt with therein. Only upon close scrutiny of the amendments passed by 1970 PA 219 to Section 9 of the Home Cities Act can reference be found to the authority of the Boundary Commission in the areas of annexation. Mr. Justice Williams in his *Alan* decision at p 281; 200 NW2d p 663, said as follows:

"'*Mok* says the Constitution requires you to do the whole job right. *Burton* says it is good enough to do the job half right. Furthermore, *Burton* says you can avoid the second half of the job of republication if you hide your purpose whereas *Mok* requires the second half of the job of republication even though you disclose your purpose.

"'This Court is convinced the Constitution is not satis-

fied with half way measures and does not prefer dissimulation to straightforwardness. We adopt the rule of *Mok* and overrule *Burton*.'

"The obvious intention of the Legislature to confer new and additional duties and responsibilities upon the State Boundary Commission is apparent by the very thrust of 1970 PA 219. That the job was only half finished after the adoption of 1970 PA 219 is evident by the adoption of 1972 PA 362 in which the State Boundary Commission Act was specifically amended authorizing the Boundary Commission to exercise jurisdiction over matters of annexation of territory to a city. Again, as Mr. Justice Williams said on p 285; 200 NW2d p 665 of *Alan*:

" 'There is nothing complicated, burdensome, unreasonable or obscure about what we say here today. If a bill under consideration is intended, whether directly or *indirectly* to revise, alter or amend the operation of previous statutes, then the Constitution, unless and until appropriately amended, requires that the Legislature do in fact what it intends to do by operation.' (Emphasis added.)

"In conclusion, though recognizing the authority of *Village of Kingsford* v *Cudlip*, 258 Mich 144; 241 NW 893 (1932), which held that the title of 1909 PA 279, which provided for the incorporation of villages and for revising and amending their charters was sufficient language to sustain provisions for annexation, this court holds that, in light of *Alan* v *Wayne County*, failure of the Legislature to express the object of the Legislature to deal with the subject of 219 specifically in the title annexation, when taken in conjunction with plaintiffs' arguments concerning Art 4, §25, *i.e.*, amendment by reference and without reenactment, make the adoption of 1970 PA 219 constitu-

tionally deficient, and plaintiffs' motion for summary judgment is granted on this ground.

"II.

"Sufficiency of the criteria in 1968 PA 191 for guidance.

"Though resolution of issue No. I requires the granting to plaintiffs the relief prayed for, due to the controversy surrounding that issue, and the ever-present possibility of appeal, the court will decide all other issues raised herein.

"Though plaintiff makes a compelling argument with reference to the legislative failure to establish sufficient standards and guidelines within which the State Boundary Commission shall act, this court cannot say that the Legislature totally abrogated its responsibility in this complex area and made an improper delegation of legislative authority to the State Boundary Commission. For years the field of annexation had been fraught with local political evils, including rural-urban in-fighting, unseemly municipal rivalries, and blatant grabs for tax base. Though wide discretion is granted to the State Boundary Commission, that discretion is no longer unbridled. The act contains provisions for judicial review. Plaintiffs' motion for summary judgment on this ground is denied.

"III.

"The classification of '100 persons or less' provided in CL 117.9(4) does not rest upon such a difference in situation or circumstances as to constitutionally permit such a division.

"Plaintiffs, though recognizing there is no absolute right to vote on questions of municipal annexation grounded

upon a constitutional basis, submit that the granting of the right to vote by way of referendum on territories to be annexed of more than 100 persons and denying it to territories of less than 100 persons is arbitrary and discriminatory and a violation of the equal protection clause. Such a provision appears to this court to be based upon a considered pragmatism and is not in and of itself constitutionally suspect. Plaintiffs' request for summary judgment on this ground is denied.

"IV.

"A district designed to exclude objecting voters is a gerrymander, and the Boundary Commission has a duty to take corrective action or reject a gerrymandered petition.

"Plaintiffs have failed to indicate to the court by way of either law or fact a case for the application of the concept of gerrymandering, either in its pure 'geographical' sense or in a 'political-economic' context. There is no indication upon the referenced record, or for that matter in plaintiffs' brief, that the proposed annexation is so designed as to rob the township of so much of its tax base that it can no longer exist as a political entity. Plaintiffs' contentions that defendant Boundary Commission was obliged to submit the later petition for the annexation of the entire township to the voters is unfounded, and the request for summary judgment on this ground is denied.

"V.

"The failure of the Boundary Commission to promulgate rules as required by the Act and the Administrative Procedures Act.

"Though it is unfathomable to this court how any administrative body can function without lawfully adopted rules governing its own proceedings, plaintiffs have failed to point out to this court how such a failure on the part of the State Boundary Commission has in any way prejudiced them in their presentation of their opposition to said annexation or how such failure adversely affects the decision made by the Boundary Commission. Plaintiffs' motion for summary judgment on this ground is denied.

"VI.

"The proceedings of the Boundary Commission are regulated by the contested case provisions of the Administrative Procedures Act, and failure to follow those provisions requires reversal of the determination.

"Plaintiffs' arguments in this regard all ultimately bear upon the plaintiffs' right to judicial review. Since that right is unquestioned and is presently being exercised, plaintiffs have failed to point out to the court how the agency's purported failure to treat the matter as a contested case in any way affected either the substantive or procedural rights of plaintiff. Plaintiffs' motion for summary judgment on this ground is denied.

"VII.

"The provision of 1968 PA 261 were not observed and such failure renders the Commission findings reversible.

"Plaintiffs contend the Boundary Commission was required by 1968 PA 261 to hold its deliberative session in public. Without any lengthy discourse on the intended purport of 1968 PA 261, it is clear to this court that a state administrative agency speaks through its enunciated orders

encompassing findings of fact and law based upon the evidence educed at a public hearing. This court sees no reason why the deliberative give and take of a multi-member tribunal should be made part of the public record, any more so than this individual judge's thought processes while arriving at a decision should be made part of the record. Plaintiffs' motion for summary judgment on this ground is denied.

"VIII.

"That the Commission ignored the criteria of Section 9 and substituted their own criteria for decision.

"This ground raised by plaintiffs really goes to the ultimate merits of the controversy. Since the earlier portion of this opinion makes decision on the merits unnecessary and since plaintiffs have failed to point out where as a matter of law defendant Commission did ignore the criteria of Section 9 and selected their own criteria for decision, plaintiffs' motion for summary judgment on this ground is likewise denied.

"CONCLUSION

"For the reasons indicated herein, in subheading I, plaintiffs; motion for summary judgment is granted, this court having specifically denied all other grounds raised. An order in conformity with this opinion shall enter with ten days or this opinion shall become the final order of this court." (Emphasis in original.)

A corrected final summary judgment was duly filed on the ninth day of November 1973 by the Circuit Judge. The said summary judgment is as follows:

"This cause, having come on to be heard upon a Motion for Summary Judgment filed by the plaintiffs therein and oral and written arguments of counsel for the respective parties having been presented to this court and this court being fully advised in the premises, IT IS HEREBY THE FINDINGS AND ORDER of this court as follows:

"FINDINGS

"1. The procedure followed by the Michigan legislature in enacting 1970 PA 219 is violative of Article IV, Sections 24 and 25, of the Michigan Constitution of 1963 and said Act is accordingly unconstitutional and of no force and effect for the following reasons:

"A. 1970 PA 219 did not include within its title as an object of the law the subject of 'annexation,' in violation of Art IV, Sec 24 of the 1963 Michigan Constitution.

"B. The title of 1970 PA 219 does not mention conferring of additional powers over the subject of annexation on the State Boundary Commission, in further violation of Art IV, Sec 24 of the 1963 Michigan Constitution.

"C. The legislature, in adopting 1970 PA 219, attempted to amend 1968 PA 191 without re-enacting or republishing said latter Act, in violation of Art IV, Sec 25 of the 1963 Michigan Constitution.

"2. Sufficient criteria is contained in 1968 PA 191 to support the delegation of legislative authority to a State Boundary Commission.

"3. The classification of '100 persons or less' provided in 1970 PA 219 is based upon a considered pragmatism and is not, in and of itself, constitutionally suspect.

"4. Plaintiffs have failed to indicate to the court, by way of either law or fact, a case for the application of the concept of gerrymandering, either in its pure 'geographical' sense or in a 'political-economic' context and there is no indication that the proposed annexation would rob the Township of so much of its tax base that it could no longer exist as a political entity. The Boundary Commission was, accordingly, not obligated to submit the annexation of the entire Township to the voters by way of referendum.

"5. Though it is unfathomable to this court how any administrative body can function without lawfully adopted rules governing its own proceedings, plaintiffs have failed to point out to this court how such a failure has in any way prejudiced plaintiffs in their presentation to the Commission or how such failure adversely affects the decision made by the Boundary Commission.

"6. The claim that the proceedings of the Boundary Commission are regulated by the 'contested case' provisions of the Administrative Procedures Act of the state ultimately bears upon the right of the plaintiffs to judicial review which is presently being exercised and plaintiffs have failed to show how any failure to follow the 'contested case' provisions have affected either the substantive or procedural rights of plaintiffs.

"7. 1968 PA 261 does not require the deliberative give and take of a multi-member tribunal to be made a part of the public record and conducted in public.

"8. Whether or not the Commission ignored the criteria of 1968 PA 191 in making its decision goes to the ultimate merits of the controversy and a decision on such merits is unnecessary as a result of the findings of this court in

paragraph 1 hereof. Furthermore, plaintiffs have failed to point out where, as a matter of law, the defendant State Boundary Commission did ignore such criteria in making its decision.

"9. Because the attempt by the legislature to grant exclusive jurisdiction over annexation proceedings by the adoption of 1970 PA 219 was constitutionally deficient and without force and effect as indicated in paragraph 1 of these findings, the decisions of the Michigan State Boundary Commission under Docket Nos. 71-AT-7 and 71-AR-11 are null and void.

"ORDER

"IT IS ORDERED AND ADJUDGED for the reasons set forth in paragraph 1 of the findings regarding the unconstitutionality of 1970 PA 219, that plaintiffs' Motion for Summary Judgment be granted and the orders of the State Boundary Commission under Docket Nos. 71-AT-7 and 71-AR-11 and all proceedings provided to be taken pursuant to said orders are hereby permanently enjoined and all proceedings for annexation thereunder are hereby declared null and void and of no force and effect.

"IT IS FURTHER ORDERED that the petitions transferred to the Boundary Commission from the Clerk of the County of Midland and considered by the Boundary Commission under its Docket No. 71-AT-7 are ordered returned by the Secretary of the State Boundary Commission to the Clerk of Midland County, on behalf of the Midland County Board of Commissioners for whatever action is deemed legally appropriate."

We review the issues raised and passed upon by the trial court in proper order.

IA.

Is 1970 PA 219 unconstitutional because it violates the proscription of Const 1963, art 4, §24, in that it purports to change the jurisdiction of the SBC which is outside of the title of said Act 219, and the title of the Homes Rule Cities Act?

Const 1963, art 4, §24, provides:

"No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."

The purpose of Const 1963, art 4, §24, is to avoid the legislature passing laws not fully understood by them and by the public, and to notify them of the design of the statutory change. *Maki* v *City of East Tawas*, 385 Mich 151; 188 NW2d 593 (1971).

The issue presented is whether 1970 PA 219, amending the Home Rule Cities Act (hereinafter referred to as HRCA) in the area of annexation, may also encompass a grant of authority to the SBC, a state agency, the jurisdiction of which is clearly outside of the title of the HRCA. The question is not, as appellants assert, whether the HRCA title is sufficiently broad enough to include the object of the HRCA governing annexation. *Village of Kingsford* v *Cudlip*, 258 Mich 144; 241 NW 893 (1932) and *Hall* v *Calhoun County Bd of Supervisors*, 373 Mich 642; 130 NW2d 414 (1964). The question instead is whether the HRCA title is sufficiently broad to include the object of changing and increasing the jurisdiction of the SBC over annexation.

Here, the Act in question had two purposes—to withdraw certain annexation authority from the Home Rule Cities and to confer annexation authority on the SBC. The first purpose was obvious in the title, but the second purpose was anything but obvious. The legislature and the public should understand from the title that only provisions germane to the reasonable object of the title are being amended. *Blades* v *Bd of Water Commissioners of Detroit*, 122 Mich 366; 81 NW 271 (1899) and *Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 441, 466; 208 NW2d 469, 474 (1973). Those interested in the authority and jurisdiction of the SBC could hardly be expected to realize that a change was being made therein in another Act whose title has to do with Home Rule Cities.

It was inappropriate to find the provisions of Act 219 within the title of HRCA. It being inappropriate to find such provisions in the HRCA, then we observe that the public and the legislature were not clearly informed and aware of the intention and context of this legislation. We conclude that the trial court was correct in deciding that the title of the HRCA is sufficient to encompass the annexation authority of cities, but is not authority for the conclusion that the title of the HRCA and Act 219 are sufficient to encompass the subject of the annexation jurisdiction of an entirely separate state agency. *Alan* v *Wayne County*, 388 Mich 210; 200 NW2d 628 (1972). We rule that 1970 PA 219 is unconstitutional as violating Const 1963, art 4, §24.

IB.

Is 1970 PA 219 unconstitutional for the reason that it is in violation of Const 1963, art 4, §25, in that its purpose

is to amend the provisions and jurisdiction of the State Boundary Commission Act (hereinafter referred to as SBCA) without reenacting and republishing that Act?

Const 1963, art 4, §25 provides: "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length." Appellants assert that it was unnecessary to reenact and republish the SBCA because 1970 PA 219 did not amend the SBCA in any way. *Wayne County Prosecuting Attorney* v *Wayne County Bd of Commissioners*, 44 Mich App 144; 205 NW2d 27 (1972). Further, that as explained by Justice COOLEY in *People* v *Mahaney*, 13 Mich 481 (1865), a literal application of the constitutional provision is not warranted, and one Act may incorporate another by reference if the latter Act is not changed. *Alan*, *supra*, at 274; 200 NW2d 659; and *Clay* v *Penoyer Creek Improvement Co*, 34 Mich 204 (1876).

Appellees, Township of Midland and Mr. Chatterton, claim that certain exceptions which have grown to surround the literal application of Const 1963, art 4, §25 are no longer applicable where inconsistent with the principles enunciated in *Alan*, pp 270-271; NW2d 657. In *Mok* v *Detroit Building & Savings Association, No. 4*, 30 Mich 511 (1875), the statute did more than merely reenact or adopt the other statute, it made changes, leaving the parties to fit them together as best they could. *Mok*, pp 521-522, 529, quoted in *Alan*, pp 272-273; NW2d 658-659. Further, 1970 PA 219 attempts to duplicate 1968 PA 190 (SBCA), but makes changes also in jurisdiction which renders the SBCA not complete within itself, creates exceptions to the jurisdictional grant and establishes certain procedures to be followed by the SBC which requires putting the two Acts together and figuring out as best as one can what has

been amended and what has not. They further assert that the specific words of Act 219 recognize this because it states in sub-section (1):

"In the event of a conflict between the provisions of this act and Act 191 of the Public Acts of 1968 • • • (SBCA) the provisions of act 191 • • • shall govern."

Plaintiffs also assert that in addition to violating the plain words of the Constitution, and violating the principles established in the cases of *Alan* and *Mok*, the enactment of 1970 PA 219 also violated the underlying purpose of that provision—by purporting to amend the HRCA while in fact amending the SBCA. The passage of Act 219 evidences precisely the deception that leads to the type of legislative inadvertence resulting in confusion that is the mischief designed to be prevented.

Appellants' argument that not one word of the SBCA was amended is disingenuous. Act 219 clearly assigned additional functions, duties and procedures to the SBC. It is not material whether an Act purports to amend another, but instead the question is whether in fact it alters or amends the other Act. Dissent of Justice POTTER in *People* v *Stimer*, 248 Mich 272, 282, 294; 266 NW 899, ..., ... (1929), adopted in *Alan*, p 278; NW2d 661. In order to learn of the SBC's jurisdiction and procedure in annexation cases, one must read an entirely different statute which is not even referred to in the SBCA. Not only can confusion result, but confusion has resulted. Indeed, if one wished to know the jurisdiction of the SBC over annexation, and looked at the SBCA, one would find not only no sections concerning annexation, but additionally that annexation is not even in the title of the Act.

We rule that the legislature has unconstitutionally attempted to amend SBCA (statute C) by putting in the HRCA (statute B) specific words to amend the SBCA (statute C) without republishing or reenacting the SBCA (statute C) contrary to *Mok* and *Alan*. The enactment of 1970 PA 219 was dissimilation rather than straightforwardness. The trial court correctly ruled on issue 1B and we refer to the trial court's opinion on the issue.

As to additional issues raised in the trial court and decided therein, we consider and determine them in the following manner.

II

Sufficiency of the criteria in 1968 PA 191 for guidance.

We adopt the ruling and reasoning of the trial court in its opinion on this issue. We note the finding that there was no showing of prejudice resulting to the plaintiffs.

III

The classification of "100 persons or less" provided in MCLA 117.9(4); MSA 5.2088(4), does not rest upon such a difference in situations or circumstances as to constitutionally permit such a division.

We rule that there is no valid issue here because in the instant petition concerning the 319 acres—there were no persons residing thereon. Under the former law or Act 219, which we determine to be unconstitutional, the rule governing the election would be the same. We also adopt the reasoning and ruling of the trial court on this issue.

IV

A district designed to exclude objecting voters is a gerrymander, and the SBC has a duty to take corrective action or to reject a gerrymandered petition.

We reject the argument and claims of the plaintiffs and adopt the reasoning and ruling by the trial court on this issue.

V

The failure of the SBC to promulgate rules as required by the Act and the Administrative Procedures Act.

We agree with the trial court that it would have been much better if the SBC had adopted rules and published them. In the absence of a showing of prejudice by plaintiffs, we agree with the trial court in its reasoning and ruling on this issue.

VI

The proceedings of the SBC are regulated by the contested case provisions of the Administrative Procedures Act, and failure to follow those provisions requires reversal of the determination.

The trial court ruled that there was no showing of prejudice resulting from the manner in which the proceedings were conducted by the SBC, and therefore no reversible error was present. We agree.

VII

The provisions of 1968 PA 261 were not observed and such failure renders the SBC findings reversible.

We rule that the trial court's reasoning and ruling on this issue was correct.

VIII

That the SBC ignored the criteria of Section 9 and substituted their own criteria for decision.

We adopt the reasoning and ruling of the trial court as contained in its opinion stated herein, concluding that it correctly disposes of the issue.

The decisions of the Ingham County Circuit Court are affirmed. No costs, a public question being involved.

EXHIBIT E

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF NOVI, Plaintiff-Cross Appellant, and W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, Cross Appellants. v. STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant, and CITY OF NOVI, a municipal corporation Intervening Defendant-Appellant, and GREGORY I. DONOVAN, et al., Intervening Defendants.	No. 20227

TOWNSHIP OF NOVI, Plaintiff-Cross Appellant, and W. B. CHASE and CHASE MANOR FORMS, INC., a Michigan corporation and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, Cross Appellants, v. STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF NOVI, a municipal corporation, and GREGORY I. DONOVAN, et al, Intervening Defendants.	No. 20228

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, Plaintiffs-Appellees, Cross Appellants, v. MICHIGAN STATE BOUNDARY COMMISSION, Defendant, and CITY OF BRIGHTON, a Michigan municipal corporation, Intervening Defendant Appellant, and GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan, corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 20268

BEST COPY AVAILABLE

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, Plaintiffs-Appellees Cross Appellants, v. MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 20410

Before: McGregor, P. J., and T. M. Burns and N. J. Kaufman, JJ. T. M. Burns, J.

The cities of Novi and Brighton petitioned the State Boundary Commission (SBC) for annexation of lands lying within their respective townships. The SBC approved the petitions and issued orders accordingly.

The two townships sought to have the SBC orders declared void because the legislation conferring annexation jurisdiction upon the SBC is unconstitutional. The lower courts held for the townships. We granted leave to appeal.

Issues identical to those raised on this appeal have recently been decided by another panel of this Court in *Township of Midland* v *Michigan State Boundary Commission* (Docket Nos. 19154-56, released October 13, 1975). We agree with the holdings and reasoning of that opinion and herein follow it.

The SBC was created by the Boundary Commission Act (BCA)[1] in 1968. That legislation gave the commission jurisdiction over proceedings for the incorporation and consolidation of home rule cities. Matters concerning annexation were handled by the governing boards of the counties under the Home Rule Cities Act (HRCA).[2] In 1970, the HRCA was amended by 1970 PA 219, removing jurisdiction over annexations from the counties and giving such jurisdiction to the SBC. The principal issues on this appeal concern the constitutionality of 1970 PA 219.

In the City of Novi annexation dispute, the trial court found that:

1. The procedure followed by the Legislature in enacting 1970 PA 219 is violative of Const 1963, art 4, §24 and §25 because the matter of annexation is not mentioned in the titles of the HRCA and 1970 PA 219, and in enacting 1970 PA 219, the Legislature attempted to revise, alter or amend by reference to title only and without re-enacting and republishing.

2. The classification of "100 persons or less" in 1970 PA 219 is not based upon such a difference in situation or

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[1] MCLA 123.1001; MSA 5.2242(1)

[2] MCLA 117.1; MSA 5.2071

circumstance as to constitutionally permit such division as the basis for denying the right or privilege of referenda to some and granting it to others and accordingly violates Const 1963, art 1, §1 and §2.

In the City of Brighton case, the court below found as follows: (1) in enacting 1970 PA 219, the Legislature violated Const 1963, art 4, §24 and §25; (2) the classification of "100 persons or less" in 1970 PA 219 is not a valid classifica ion; (3) in conferring annexation authority to the SBC, the Legislature failed to set adequate standards for guiding the commission; and (4) the enactment of 1972 PA 362 does not cure the constitutional defects of 1970 PA 219.

Does 1970 PA 219 violate Const 1963, art 4 §24 and §25?

Section 24 provides:

> "No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."

1970 PA 219 "embraced" as its object the removal of annexation authority from the counties and granting such authority to the SBC. The title to 1970 PA 219 read, however, as follows:

> "An ACT to amend section 9 of the Act 279 of the Public Acts of 1909, entitled as amended 'An act to provide for the incorporation of cities and for revising and amending their charters'***"

1970 PA 219 did indeed amend §9 of the HRCA. But it

went beyond "amending" and actually conferred authority on the SBC. There is nothing in the title to either the Home Rule Cities Act or 1970 PA 219 to advise anyone that the powers of the SBC were being rather dramatically enlarged. See *Township of Midland* v *Michigan State Boundary Commission*, Mich App ; NW2d (1975).

Const 1963, art 4, §25 provides as follows:

> "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length."

The problem here, simply stated, is that the Legislature attempted to amend the BCA by putting into the Home Rule Cities Act specific words to amend the Boundary Commission Act. This issue was ably discussed in Township of *Midland, supra,* and we adopt Judge Holbrook's reasoning and the Court's conclusion that §25 was violated. The holdings of the lower court on this issue are affirmed.

Does the classification of "100 of less" persons as determining referendum rights constitute a violation of equal protection rights or Const 1963, art 1, §1?

This issue concerns a subsection of 1970 PA 219 [MCLA 117.9(4); MSA 5.2088(4)] which in part provides:

> "If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum."

Several arguments are presented as to how this classifica-

tion is unconstitutional or otherwise illegal. None are persuasive. The question of annexation is strictly a political one—a matter for the Legislature to regulate—and is not subject to constitutional prohibitions. *Detroit Edison Co* v *East China Twp School District No. 3*, 378 F2d 225 (CA 6, 1967). Even if it were, the classification based on population would be valid as having a rational basis. See *Tribett* v *Village of Marcellus*, 294 Mich 607; 293 NW 872 (1940). The holdings of the lower court on this issue are reversed.

Do the criteria set out in MCLA 123.1009; MSA 5.2242(9) [1968 PA 191] provide adequate guidance to the SBC?

We find no support for the Ingham Circuit Court's decision on this issue in the Brighton case. The act specifies numerous criteria to be considered by the SBC in deciding annexation questions. Compared to the criteria upheld by our Supreme Court in *Highway Commission* v *Vanderkloot*, 392 Mich 159; 220 NW2d 416 (1974), the criteria in this case are more than adequate and clearly are "as reasonably precise as the subject matter requires or permits." *Osius* v *St. Clair Shores*, 344 Mich 693, 698; 75 NW2d (1956). The holding of the lower court on this issue is reversed.

Were the constitutional defects in the Boundary Commission Act and the Home Rule Cities Act cured by 1972 PA 362?

By 1972 PA 362 the Legislature sought, but failed, to correct the constitutional defect in the Home Rule Cities Act as amended by 1970 PA 219. There was no republication of the HRCA as explicitly required by Const 1963, art 4, §25. The defects in 1970 PA 219 were not cured. The holding of the lower court on this issue is affirmed.

The issues relating to the Administrative Procedures Act, 1968 PA 261 and gerrymandering are answered by *Township of Midland* v *Michigan State Boundary Commission, supra.* We find no reason to differ with Judge Holbrook in his resolution of those issues.

The remaining issues are without merit.

Affirmed in part; reversed in part.

EXHIBIT F

MIDLAND TOWNSHIP v STATE BOUNDARY COMMISSION

MIDLAND TOWNSHIP v MIDLAND COUNTY BOARD OF COMMISSIONERS

NOVI TOWNSHIP v STATE BOUNDARY COMMISSION

BRIGHTON TOWNSHIP v STATE BOUNDARY COMMISSION

Docket Nos. 57720, 57732, 58223, 58236, 58242–58245. Argued June 7, 1977 (Calendar Nos. 1–6).—Decided October 24, 1977.

These appeals challenge the constitutionality of legislation which enables the State Boundary Commission to order township territory to be annexed to an adjoining city.

Midland Township and Robert B. Chatterton, a township supervisor, brought an action against the State Boundary Commission to set aside an annexation of township land to the City of Midland. The Ingham Circuit Court, Donald L. Reisig, J., granted summary judgment for the plaintiffs and found the legislation unconstitutional. The Midland Township plaintiffs also brought an action against the Midland County Board of Commissioners and others to restrain an annexation election called by the commissioners. The Midland Circuit Court, John X. Theiler, J., granted judgment for the defendants. The City of Midland intervened as a defendant in each case. The Court of

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REFERENCES FOR POINTS IN HEADNOTES

[1, 2, 4] 73 Am Jur 2d, Statutes § 100 *et seq.*

[3] 73 Am Jur 2d, Statutes § 119 *et seq.*

[5] 73 Am Jur 2d, Statutes § 130 *et seq.*

[6] 73 Am Jur 2d, Statutes § 426.

[7] 73 Am Jur 2d, Statutes § 392 *et seq.*

[8, 15] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 50, 51.

[9, 10] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 63.

[11, 17] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 70 *et seq.*

[12] 2 Am Jur 2d, Administrative Law § 633.

[13, 14] 2 Am Jur 2d, Administrative Law § 610 *et seq.*

[16, 18] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 55 *et seq.*

Appeals, V. J. Brennan, P. J., and D. E. Holbrook and M. F. Cavanagh, JJ., affirmed the consolidated appeals (Docket Nos. 19154–19156, 20255). The plaintiffs and the State Boundary Commission appeal.

Novi Township, and Brighton Township and Muriel Beurmann, brought complaints challenging the approval by the State Boundary Commission of annexation of lands within the townships to the cities of Novi and Brighton, respectively. Owners of real property intervened as plaintiffs and defendants, and the cities of Novi and Brighton intervened as defendants in the suits. The Ingham Circuit Court, Jack W. Warren and Donald L. Reisig, JJ., granted judgments for the plaintiff townships and found the legislation unconstitutional. The Court of Appeals, McGregor, P. J., and T. M. Burns and N. J. Kaufman, JJ., affirmed in part and reversed in part (Docket Nos. 20227, 20228, 20268, 20410). The State Boundary Commission, the City of Novi, and the City of Brighton appeal. *Held:*

1. The title of the home rule cities act is sufficient under the Title-Body Clause of the Constitution to encompass provisions for change of city boundaries by annexation. An act providing for the functioning of a city covers many subjects which might have been dealt with in separate acts because the object of the act is necessarily broad-ranging and comprehensive. It is not consequential for purposes of the Title-Body Clause which agency is charged with implementation of a provision of the home rule cities act as long as the provision is germane to functioning of city government. Nor is it important that city annexation procedures might have been enacted in legislation creating the State Boundary Commission.

2. The Constitution does not require that the title of the home rule cities act, which by amending its annexation procedures amended by implication the 1968 act creating the State Boundary Commission, reflect the implied amendment or that the title of the boundary commission act reflect the implied amendment. The concept of implied amendment would be nullified if express amendment of the body or title of an impliedly amended statute were required. Additional powers and duties are often conferred by statute on public officials and agencies who derive their principal responsibility from other statutory provisions or from the Constitution without specific reference in the entitlement of the statute conferring additional powers and duties that the body of the statute provides. The Constitution does not require, nor would a useful purpose be served by, re-enacting and republishing the portions of §§ 6,

8, 8a, and 14 of the home rule cities act which were superseded by the 1970 amendment of § 9 of the act.

3. No city, village, township or person has any vested right or legally protected interest in the boundaries of a local governmental unit. The Legislature is free to change those boundaries at will. Legislation providing for a referendum where more than 100 persons reside in the territory to be annexed and denying a referendum where 100 persons or fewer reside in the territory does not violate the Equal Protection Clause because it provides a means appropriate to the resolution of disagreements concerning annexation of territory to a city. The challenged classification was not unreasonable and tends to prevent abuses which may occur if a small group of persons have the absolute power to prevent an annexation economically advantageous to other persons or to the community.

4. The challenged legislation delegates a power of the Legislature which is essentially political and does not involve any vested right or legally protected interest. The decision will be a value judgment based on the particular facts and circumstances of the annexation under consideration. It would unduly inhibit the exercise both of the Legislature's prerogative to delegate its power and the function of the State Boundary Commission to require greater particularity in the statutory criteria for deciding annexation questions than those in this legislation.

5. An annexation proceeding is not a "contested case" within the meaning of the Administrative Procedures Act, which was designed to provide procedural protection where a personal right, duty or privilege is at stake by an opportunity for an evidentiary hearing. Affording the public a right to be heard on an annexation decision at a public hearing before the State Boundary Commission does not create an implied substantive personal right in the decision. The judiciary, to avoid the risk of being drawn into an essentially political question in which no vested right or legally protected interest is involved, ought to be especially circumspect in reviewing determinations of the State Boundary Commission.

6. The State Boundary Commission may regard a particular statutory criterion to be of decisive importance, outweighing all other criteria. The commission's decision to "award the tax base" of a site for a proposed nuclear power plant to the City of Midland is supported by the record, is not arbitrary, and is consistent with the statutory criteria and the standard of reasonableness.

7. The State Boundary Commission may revise the boundaries described in a petition for annexation to include any land

which might originally have been included in the petition or to exclude land which was described in the petition, and there is no requirement that the parcels annexed be contiguous to each other, although any territory annexed to a city must adjoin the city. The commission applied an erroneous principle when it ruled that it could not revise the boundaries, as requested by Novi Township, to include a noncontiguous parcel, Brookland Farms Subdivision. The Novi Township petition is remanded so that the State Boundary Commission may consider whether to include the Brookland Farms Subdivision in the annexation.

8. The motive or purpose of a city in drawing the proposed boundaries so that the area contains fewer than 100 residents and thus the annexation will not be subject to referendum is not material, nor is the motive or purpose of a township in requesting a revision of boundaries so that the area has more than 100 residents; the question is whether the boundaries and the annexation are reasonable. The Legislature may reasonably determine that territory containing relatively few or no residents should be subject to annexation and that there is need for a classification based on population to preclude a referendum in such a case and to allow it where the territory to be annexed is more populous. The State Boundary Commission decisions approving the Midland, Novi and Brighton annexations with boundaries as proposed by the cities were not violative of the statutory standard, reasonableness.

9. The hearing before the State Boundary Commission was not a "public meeting" within the meaning of the former public meetings act.

10. Land which has been disconnected from a village under the farmland disconnection act may properly be annexed to a city. Disconnection is not necessarily permanent; new facts might arise which could render a disconnection order absolute. Exercise by the commission of the power to annex disconnected land does not constitute a collateral attack on the judgment of the circuit court disconnecting the land.

The decisions of the Court of Appeals are reversed.

64 Mich App 700; 236 NW2d 551 (1975) reversed.

67 Mich App 596; 242 NW2d 449 (1976) reversed.

1. MUNICIPAL CORPORATIONS—STATUTES—HOME RULE CITIES ACT—ANNEXATION—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE.

The title of the home rule cities act is sufficient under the Title-Body Clause of the Constitution to encompass provisions for change of city boundaries by annexation of territory (Const 1963, art 4, § 24; 1970 PA 219; MCL 117.9; MSA 5.2088).

2. STATUTES—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE.

The title of an act need not serve as an index of all that the act contains; the requirement of the Title-Body Clause of the Constitution is met if an act centers on one main general object or purpose which the title comprehensively declares, although in general terms, and if provisions in the body of the act not directly mentioned in the title are germane, auxiliary or incidental to that general purpose (Const 1963, art 4, § 24).

3. MUNICIPAL CORPORATIONS—STATUTES—HOME RULE CITIES ACT—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE.

An act providing for the functioning of a city covers many subjects which might have been dealt with in separate acts; the object of such an act is necessarily broad-ranging and comprehensive, and includes anything germane to the functioning of cities (Const 1963, art 4, § 24; MCL 78.1 *et seq.*; MSA 5.1511 *et seq.*).

4. MUNICIPAL CORPORATIONS—STATUTES—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE.

It is not consequential for purposes of the Title-Body Clause of the Constitution whether a city, county or state official or agency is charged by an act with implementation of a provision of the act so long as the provision is germane to the functioning of city government where the act centers on the functioning of city government and its title so indicates (Const 1963, art 4, § 24).

5. STATUTES—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE—AMENDMENTS.

The Constitution does not require that the title of an act which amends another act by implication or the title of the act so amended reflect the implied amendment (Const 1963, art 4, § 24).

6. MUNICIPAL CORPORATIONS—STATUTES—HOME RULE CITIES ACT—STATE BOUNDARY COMMISSION—CONSTITUTIONAL LAW—REPUBLISHING CLAUSE.

The Constitution does not require reenacting and republishing portions of a statute which are repealed by implication or reenacting and republishing portions of the statute which remain viable; where an amendment to the home rule cities act, by its terms, does not change or dispense with any requirement of the act which created the State Boundary Commission but makes certain sections of the home rule cities act not applicable to certain annexations approved by the State Boundary Commission, it is not necessary to excise the portions of the

home rule cities act which are superseded or to reenact and republish the parts of the boundary commission act which are amended by implication (Const 1963, art 4, § 25; 1970 PA 219; MCL 117.9; MSA 5.2088).

7. STATUTES—CONSTITUTIONAL LAW—AMENDMENTS.

Ambiguities and constructional issues posed by a failure of the Legislature to repeal all laws concerning an entire subject when enacting amendatory legislation do not affect the validity of the legislation because of an asserted conflict between the provisions of different acts or sections of the same act on that subject.

8. MUNICIPAL CORPORATIONS—CONSTITUTIONAL LAW—BOUNDARIES—ANNEXATION.

No city, village, township or person has any vested right or legally protected interest in the boundaries of such governmental unit; a state's legislative body may at its pleasure expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation in the absolute discretion of the state, in conformity with the state Constitution, unrestrained by any provision of the Constitution of the United States.

9. MUNICIPAL CORPORATIONS—ANNEXATION—REFERENDUM—EQUAL PROTECTION.

A section of the home rule cities act which provides for a referendum where more than 100 persons reside in a territory to be annexed to a city and denies a referendum where 100 persons or fewer reside in the territory does not violate the Equal Protection Clause because it was not unreasonable and tends to prevent the abuses which may occur if a few persons have absolute power to prevent an annexation economically advantageous to other persons or to the community and thereby bears a substantial relation to the object of the legislation by providing a means to resolve disagreements concerning annexation (Const 1963, art 1, § 2; 1970 PA 219; MCL 117.9; MSA 5.2088).

10. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—DELEGATION.

Reasonableness, determined on the basis of statutorily enumerated criteria, is a sufficient guideline for the exercise of State Boundary Commission discretion in annexation proceedings; it would unduly inhibit the exercise both of the Legislature's prerogative to delegate the power to decide the political consid-

erations and the function of the State Boundary Commission to require greater particularity of the criteria (MCL 123.1008; MSA 5.2242[8]).

11. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—ADMINISTRATIVE LAW.

An annexation proceeding before the State Boundary Commission is not a "contested case" within the meaning of the Administrative Procedures Act; affording the public an opportunity to be heard on an annexation decision does not create a substantive personal right in the decision which requires procedural protection under the Administrative Procedures Act (MCL 24.203[3], 123.1004; MSA 3.560[103], 5.2242[4]).

12. ADMINISTRATIVE LAW—JUDICIAL REVIEW.

Judicial review of an administrative decision must be undertaken with due deference to administrative expertise without invading the province of exclusive administrative fact-finding by displacing a state agency's choice between two reasonably differing views (Const 1963, art 6, § 28; MCL 24.306; MSA 3.560[206]).

13. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—APPEAL AND ERROR.

The constitutional provision concerning judicial review of administrative action does not limit the proceedings of the State Boundary Commission in a annexation decision, which does not involve personal or private rights in the boundaries of cities, villages or townships (Const 1963, art 6, § 28).

14. MUNICIPAL CORPORATIONS—HOME RULE CITIES ACT—ANNEXATION—STATE BOUNDARY COMMISSION.

A decision of the State Boundary Commission to "award the tax base" of the site of a proposed nuclear power plant by annexation of township territory to the City of Midland is supported by the record, is not arbitrary, and is consistent with the statutory criteria for making annexation decisions and the standard of reasonableness (MCL 123.1008; MSA 5.2242[8]).

15. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION.

The State Boundary Commission may revise the boundaries set forth in an annexation petition to include any land which might originally have been included in the petition, which need not be adjacent to the land being annexed, although it must adjoin the city, or to exclude land which was included (MCL 123.1010; MSA 5.2242[10]).

16. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION.

The motive or purpose of a city or township in drawing the proposed boundaries for an annexation petition is not material to a decision by the State Boundary Commission if the boundaries as drawn or revised by the commission are reasonable.

17. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—PUBLIC MEETINGS ACT.

The procedures of the public meetings act are not applicable to a hearing before the State Boundary Commission on a petition for annexation (MCL 12.251; MSA 4.1800[1]).

18. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—FARMLAND DISCONNECTION ACT.

Land disconnected from a village by court order pursuant to the farmland disconnection act is subject to annexation by a city pursuant to an amendment of the home rule cities act; exercise by the State Boundary Commission of the power to annex disconnected land does not constitute a collateral attack on a judgment of the circuit court disconnecting the land (MCL 117.9, 123.31; MSA 5.2088, 5.3561).

Bauckham, Reed, Lang, Schaefer & Travis for Midland Township, Novi Township and Brighton Township.

William D. Sinclair for Midland Township and Robert B. Chatterton.

Frank J. Kelley, Attorney General, *Robert A. Derengoski,* Solicitor General, and *Milton I. Firestone* and *Craig Atchinson,* Assistants Attorney General, for State Boundary Commission.

David S. DeWitt, City Attorney, for City of Midland and Kenneth W. Lybolt.

Lewis C. Andrews, Jr., for City of Midland and City of Brighton.

Edward G. Durance for Midland County Board of Commissioners and Ben Penner.

Lampert & Fried (by *David M. Fried* and *Gary E. Levitt)* for City of Novi.

Charles S. Toy for Brighton Township.

John R. Brennan, City Attorney, for City of Brighton.

LEVIN, J. The State Boundary Commission was created to consider petitions for the incorporation and consolidation of cities and villages. Its powers were subsequently enlarged to include petitions for annexation of territory to a city.

In these actions, consolidated on appeal, townships from which the commission ordered territory detached and annexed to adjoining cities and persons residing in those townships challenge the constitutionality of the enabling legislation.

Court of Appeals panels, affirming judgments of the circuit courts, held the enabling legislation to be violative of the Title-Object and Reenact-Publish Clauses of the Constitution, but disallowed the other constitutional, procedural and substantive challenges of the townships. We reverse.

The enabling legislation is constitutional.[1] We agree with the Court of Appeals that the other

[1] In an apparent response to challenges to the 1968 enabling legislation, the title of that act and a new § 11a were added and other amendments were made by 1972 PA 362. The amended title provides:

"An act to create a state boundary commission; to prescribe its powers and duties; to provide for municipal incorporation, consolidation and annexation; and to repeal certain acts and parts of acts."

Section 11a provides:

"The commission shall have jurisdiction over petitions or resolutions for annexation as provided in section 9 of Act No. 279 of the Public Acts of 1909, as amended." MCLA 123.1011a; MSA 5.2242(11a).

Our disposition makes it unnecessary to consider the townships' contentions that these amendments do not cure the constitutional infirmity of the 1970 amendment as it relates to the 1968 act and the home rule cities act, and that such amendments can only operate prospectively from the January 9, 1973 effective date of 1972 PA 362.

challenges should be denied except that the commission's adoption of an erroneous principle in the Novi annexation requires remand to it of the petition in that case.

After the circuit court had set aside the Midland annexation ordered by the commission, the annexation procedures of prior law were invoked. Midland Township then challenged annexation under those procedures; the circuit court rejected that challenge and the Court of Appeals affirmed. The issues raised in that challenge need not be further considered because the enabling legislation (here held to be constitutional) by its terms supersedes the procedures of prior law.

I

Before creation of the State Boundary Commission, the procedures for the incorporation, consolidation or alteration of boundaries of cities were set forth in the home rule cities act.[2] By enactment separate from that act, the commission was created in 1968 with authority limited to incorporation and consolidation of cities and villages.[3] The powers of the commission were extended to annexations by a 1970 amendment of the annexation procedures of the home rule cities act.[4]

The 1970 amendment is entitled: "AN ACT to amend section 9 of [the home rule cities act], entitled, as amended 'An act to provide for the incorporation of cities and for revising and amending their charters' ".

In holding the 1970 amendment violative of the Title-Object Clause, the Court of Appeals reasoned

[2] 1909 PA 279; MCLA 117.1 *et seq.;* MSA 5.2071 *et seq.*

[3] 1968 PA 191; MCLA 123.1001 *et seq.;* MSA 5.2242(1) *et seq.*

[4] 1970 PA 219; MCLA 117.9; MSA 5.2088.

that while the title of the home rule cities act "is sufficient to encompass the annexation authority of cities" it was not "sufficient to encompass the subject of the annexation jurisdiction of an entirely separate state agency".[5]

A

The Title-Object Clause provides:

"No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title." Const 1963, art 4, § 24.

The question whether the title of the home rule cities act is sufficient to encompass annexation procedures was resolved in *Village of Kingsford v Cudlip,* 258 Mich 144; 241 NW 793 (1932), where this Court considered the question in the context of annexation of township territory to a village under a village governance act.[6] The Court observed that the title of the home rule cities act

[5] *Midland Twp v State Boundary Commission,* 64 Mich App 700, 718; 236 NW2d 551 (1975).

The other panel of the Court of Appeals, in the Novi and Brighton appeals, reasoned similarly:

"1970 PA 219 'embraced' as its object the removal of annexation authority from the counties and granting such authority to the SBC.

• • •

"1970 PA 219 did indeed amend § 9 of the HRCA. But it went beyond 'amending' and actually conferred authority on the SBC. There is nothing in the title to either the home rule cities act or 1970 PA 219 to advise anyone that the powers of the SBC were being rather dramatically enlarged. See *Midland Twp v State Boundary Commission,* 64 Mich App 700; 236 NW2d 551 (1975)." *Twp of Novi v State Boundary Commission,* 67 Mich App 596, 599–600; 242 NW2d 449 (1976).

[6] 1909 PA 278; MCLA 78.1 *et seq.;* MSA 5.1511 *et seq.*

and the village act were identical—except that one speaks of the incorporation of "cities" and the other of "villages"—and declared:

"Both of these acts have been many times before this court, and, so far as we have been able to discover, this is the first time the sufficiency of the present titles has been assailed. Both the legislature and the courts have treated these titles as sufficient to sustain the provisions for change of boundaries. The necessity of such changes from time to time is apparent, and in our opinion the power conferred upon the legislature by the Constitution 'to provide by a general law for the incorporation' may fairly be said to include the change of boundaries when needed." *Id,* 151–152.[7]

Village of Kingsford was followed in *Hall v Calhoun County Board of Supervisors,* 373 Mich 642, 647; 130 NW2d 414 (1964), approving annexation pursuant to the procedures of the home rule cities act of one city by another against a contention that "this would amount to a disincorporation of the annexed city, and the title of the [home rule cities act] has reference to the incorporation only":

"We have said that the act's title is broad enough to encompass annexation, *Village of Kingsford v Cudlip,* 258 Mich 144, 151, 152, and this being so we are not prepared to say that it is not broad enough to encompass annexation of a city. We are committed to a liberal interpretation of the constitutional provision concerning titles of legislative enactments." *Id,* p 648.

[7] As originally enacted, the title of the village act and of the home rule cities act began: "An act to provide for the incorporation of" villages/cities and concluded "and for changing their boundaries". By amendments in 1913 (1913 PA 95 as to villages, 1913 PA 5 as to cities), "and for changing their boundaries" was replaced with "and for revising and amending their charters". The 1913 amendments did not, however, change the annexation provisions of either act. The Court rejected a contention that the change in the title rendered invalid formerly valid annexation provisions.

Acknowledging that *Village of Kingsford* and *Hall* establish that the title of the home rule cities act is sufficient to encompass annexation procedures, the townships contend that those cases have been superseded by *Alan v Wayne County,* 388 Mich 210; 200 NW2d 628; 67 ALR3d 1079 (1972), where this Court declared that if it were intended by the building authority act,[8] as amended, "as defendants claim, to permit taxation without limitation to pay fixed rentals, then [the body of that act] exceeds the scope of the title", because the title of that act limits the body to "the issuance of revenue bonds by such authorities". *Id,* pp 257, 358.

The Title-Object issue in *Alan* was different from the issue here presented of the sufficiency of the title. The issue in *Alan* was whether the body of the act exceeded the scope of the title, "speaking," as expressed in *People v Stanton,* 400 Mich 192, 195; 253 NW2d 650 (1977), "more broadly than its restrictively-speaking title". Similarly, see *Maki v East Tawas,* 385 Mich 151; 188 NW2d 593 (1971).

Where the issue is the sufficiency of the notice provided by the title, it is "established that the title need not serve as an index of all that the act contains". *People v Milton,* 393 Mich 234, 246–247; 224 NW2d 266 (1974).

"An abridgment of all those sections is not essential to a sufficient title. While it contains various related provisions not directly indicated or enumerated in the title, under the construction of this constitutional requirement, as many times reviewed by this court, *if the act centers to one main general object or purpose which the title comprehensively declares,* though in general terms, and if provisions in the body of the act not

[8] 1948 (1st Ex Sess) PA 31; MCLA 123.951 *et seq.;* MSA 5.301(1) *et seq.* Title amended by 1973 PA 110.

directly mentioned in the title are germane, auxiliary, or incidental to that general purpose, the constitutional requirement is met." *Loomis v Rogers,* 197 Mich 265, 271; 163 NW 1018 (1917) (emphasis supplied).

As with codifications,[9] an act providing for the functioning of a city covers many subjects which might have been dealt with in separate acts. The object of such an act is necessarily broad-ranging and comprehensive. "The home rule act and other acts providing for the incorporation of cities and other units of local government have been interpreted as having as their object anything germane to their functioning." *Detroit Board of Street Railway Commissioners v Wayne County,* 18 Mich App 614, 623; 171 NW2d 669 (1969).

B

Whether a provision is germane depends on its relationship to the object of the act, not who is charged with implementing the provision. Although an act centers on the functioning of city government and its title so indicates, it is not consequential for purposes of the Title-Object Clause whether a city, county or state official or agency is charged by the act with participation in implementation of a provision of the act as long as the provision to be implemented is germane to the functioning of city government.

Nor is it of any importance that city annexation procedures, before and after the 1970 amendment set forth in the home rule cities act, might have been located in the enabling act creating the com-

[9] *See Regents of the University of Michigan v Pray,* 264 Mich 693, 697; 251 NW 348 (1933); *People v Milton,* 393 Mich 234, 248; 224 NW2d 266 (1974).

mission. Paraphrasing *People v Milton, supra,* p 248, the correct question is not whether the Legislature might have included provisions concerning city annexation procedures in the 1968 act but whether such provisions and procedures are germane to the purpose of the home rule cities act. There is " 'no constitutional requirement that the legislature do a tidy job in legislating. * * * The constitutional requirement is satisfied if the bits and pieces so enacted are embraced in the object expressed in the title of the amendatory act and the act being amended' ". *Id,* p 242.

The further contention of the townships that the title of the 1970 amendment should have indicated that it was "effectually amending" the 1968 enabling act and that the title of that act should similarly have been amended is predicated on the erroneous premise that the 1970 amendment of the home rule cities act amended the 1968 act. Although the powers and duties of the commission were enlarged by the 1970 amendment, that was accomplished by amendment of the home rule cities act without amendment of the 1968 act which created the commission.

The Constitution does not require that the title of an act which amends another act by implication or the title of the act so amended reflect the amendment so implied; manifestly the concept of implied amendment would be nullified if express amendment of the body or title of an impliedly amended statute were required.

Perusal of the contents of the home rule cities act indicates that a narrow construction of this constitutional limitation and of the title of that act might render a number of its provisions unconstitutional.

It is, similarly, apparent on examination of the

statutes generally[10] that additional powers and duties are often conferred on public officials and agencies who derive their principal responsibility from other statutory provisions or from the Constitution without specific reference in the entitlement of the statute conferring such additional powers and duties that the body of the statute provides.

The Court of Appeals erred in holding that the title of an act concerning the governance of a city must directly indicate that the body of the act confers authority on a state agency.

On the authority of *Village of Kingsford* and *Hall,* we hold that procedures for the annexation of territory to a city are germane to the functioning of a city and that the procedures provided for in the 1970 amendment are embraced in the object expressed in the titles of the 1970 amendment and of the home rule cities act.

II

The townships contend that the "failure of the Legislature to reenact and publish at length §§ 6, 8, 8a and 14 of the Home Rule Cities Act * * * which were amended by implication" and to ree-

[10] The following are examples of statutes which confer duties upon officers or agencies not mentioned in the title who derive their principal powers from other statutes; it is also noteworthy that the statutes were enacted without reenactment and publication of the statutes conferring the powers *(see* part II):

1967 PA 288; MCLA 560.101 *et seq.;* MSA 26.430(101) *et seq.,* the Subdivision Control Act of 1967, confers duties upon county platting boards, state, city and county health departments, county drain commissions, the departments of state highways and treasury, the water resources commission, county road commissions, state conservation department, state treasurer and other state and county administrative agencies.

1972 PA 346, MCLA 281.951 *et seq.;* MSA 11.475(1) *et seq.,* the Inland Lakes and Streams Act of 1972, confers duties upon the Department of Natural Resources and the Natural Resources Commission.

nact and republish the "portions of the state boundary commission act amended by implication" by the 1970 amendment is violative of the Reenact-Publish Clause, which provides:

> "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length." Const 1963, art 4, § 25.

The Court of Appeals, agreeing with the townships, ruled that the Legislature had unconstitutionally attempted to amend the 1968 act by putting in the home rule cities act specific words to amend the 1968 act without reenacting and republishing the 1968 act "contrary to *Mok [v Detroit Building & Savings Ass'n No 4,* 30 Mich 511 (1875)] and *Alan*".[11]

A

In *Mok,* this Court held unconstitutional an 1869 act providing for the incorporation of building and savings associations by reference to an 1855 act (consisting of 12 lines including its title) for the formation of corporations for building and leasing houses and other tenements which in turn referred for its substance to an 1853 act authorizing the formation of corporations for mining, smelting or manufacturing purposes. The Court declared that the 1869 act incorporated the 1853 act by reference and *expressly* changed the provisions so incorporated: Section 4 of the 1853 act required that the articles of association state the

[11] *Midland Twp v State Boundary Commission, supra,* p 720; the other panel of the Court of Appeals declared "that the Legislature attempted to amend the [1968 act] by putting into the home rule cities act specific words to amend the boundary commission act". *Novi Twp v State Boundary Commission, supra,* p 600.

amount of capital stock actually paid in;[12] the 1869 act provided that the articles required by § 3 of that act "need not state the amount of capital stock actually paid in".[13]

The 1869 act added to the requirements of §§ 4 and 5 of the 1853 act by express reference to those sections.[14]

The Court declared that those provisions and references were express amendments of provisions of the act incorporated by reference and were violative of the constitutional limitation:

> "Amendments of statutes by implication, we have held, are not forbidden by [the constitution]: *People [ex rel Drake] v Mahaney,* 13 Mich 481 [1865]; *Underwood v McDuffee,* 15 Mich 361 [1867]. But this is not a case of that nature, as *all the alterations* we have reason to suppose the legislature designed to make in the act of 1853, to adapt it to the purposes of the act of 1869, *are made in express terms.*
>
> • • •
>
> "While the act of 1853 is left untouched as to the organizations contemplated by its provisions, it is, for the purposes of building and savings associations, altered in most important particulars in disregard of the constitutional requirement. The fourth and fifth sections are *expressly* amended without re-enacting them in full, and perhaps the same should be said of the eleventh, while the others are capable of being made available only by treating the act as revised to meet the exigencies of the case." *Mok v Detroit Building & Savings Ass'n No 4, supra,* pp 522, 529 (emphasis supplied).

[12] 1853 PA 41; 1857 CL 1802.

[13] 1869 PA 152, § 1; 1871 CL 2822.

[14] 1869 PA 152, §§ 4, 5; 1871 CL 2825, 2826.

"Sec. 4. The articles of association shall state, in addition to the requirements of section four of said chapter sixty-three • • • ."

"Sec. 5. In addition to the facts required to be reported by section five, of said chapter sixty-three, the said corporation shall report • • • "

In *Alan v Wayne County, supra,* this Court considered a provision of the building authority act[15] authorizing an authority to issue self-liquidating bonds in accordance with and subject to the provisions of the Revenue Bond Act.[16] The Court declared that an act that amended the building authority act, "if it purported to substitute full faith and credit for the normal revenue from the property as the source of payment for the authorized bonds," would offend the Reenact-Publish Clause because it did not reenact and publish at length any part of the Revenue Bond Act as well as the building authority act so amended. "This is because [the building authority act] incorporates [a provision of the Revenue Bond Act] by reference * * * and therefore under *Mok, supra,* anything [in the building authority act] or any act to amend [the building authority act] that purports 'to dispense with something required by that Act [the Revenue Bond Act], and to make some changes'[17] offends Const 1963, art 4, § 25." *Alan, supra,* pp 265–266.

The Reenact-Publish question in *Alan* arose from the incorporation of a provision of the Revenue Bond Act into the building authority act and amending the provision so incorporated which had not been reenacted and republished.

In the instant cases, the 1970 amendment of the home rule cities act, while incorporating by reference provisions of the 1968 act, does not "dispense with" or "change" any provision of the 1968 act.

[15] *See* fn 8, *supra.*

[16] 1933 PA 94; MCLA 141.101 *et seq;* MSA 5.2731 *et seq.*

[17] "But while the act of 1869 referred parties in this circuitous manner to that of 1853 for the requirements in organization, it undertook at the same time to dispense with some things required by that act, and to make some changes." *Mok v Detroit Building & Savings Ass'n No 4,* 30 Mich 511, 521 (1875).

The 1970 amendment provides that the commission, in acting on petitions for annexation, has "the same powers and duties" and is to proceed "in accordance with and subject to" the 1968 act.[18] Further, the 1970 amendment provides that in the event of a "conflict between the provisions of this act" and the 1968 act, *the provisions of the 1968 act "shall govern".*[19] By its terms, the 1970 amendment makes no change or dispensation of any requirement of the 1968 act.

While the 1970 amendment provides for resolution of conflicts between it and the 1968 act—the incorporated act, the 1968 act, "shall govern"—the procedures to be followed appear to be straightforward and uncomplicated. The commission, established under the 1968 act, is to process petitions

[18] "Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations." MCLA 117.9(2); MSA 5.2088(2).

[19] "In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Complied Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern. The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed. However, when a territory is proposed to be incorporated as a city only the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the state by the appropriate agency designated by the state administrative board which holds the record legal title to the entire area of the land in the territory adjacent to the city to be annexed, is filed with the governing body of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the governing body of such city and the approval of the township board of such township." MCLA 117.9(1); MSA 5.2088(1).

for annexation in accordance with the provisions of the 1968 act "relating to petitions which propose incorporations". The 1970 amendment, additionally, supplements the provisions relating to incorporations of the 1968 act with provisions peculiar to annexation. The 1970 amendment does not, expressly or otherwise, dispense with or change the provisions of the 1968 act incorporated into the home rule cities act; in contrast with *Mok,* there is no express amendment of the 1968 act.

B

The 1970 amendment provides that the provisions of §§ 8 and 8a of the home rule cities act "shall not be applicable" to petitions or resolutions filed with the commission, that the provisions of § 14 of the home rule cities act "shall not be applicable" to certain annexations approved by the commission except as in the 1970 amendment provided, and that from the effective date of the 1970 amendment and so long as the 1968 act is in effect "annexation of territory from a township or village to a home rule city shall be as provided in this section and no other means of annexation shall be effective".[20]

In *People ex rel Drake v Mahaney,* 13 Mich 481, 496 (1865), the act before this Court had "an amendatory effect by implication, and by its last section repeals all inconsistent acts".[21] The act repealed specific sections of certain acts and "all acts and parts of acts inconsistent with the provisions of this act". Rejecting the contention that the act violated the Reenact-Publish Clause, this Court said:

[20] MCLA 117.9(9)–117.9(11); MSA 5.2088(9)–5.2088(11).

[21] 1865 PA 78, § 38.

"We are unable to see how this conflicts with the provision referred to. If, whenever a new statute is passed, it is necessary that all prior statutes, modified by it by implication should be re-enacted and published at length as modified, then a large portion of the whole code of laws of the state would require to be republished at every session, and parts of it several times over, until, from mere immensity of material, it would be impossible to tell what the law was. If, because an act establishing a police government modifies the powers and duties of sheriffs, constables, water and sewer commissioners, marshals, mayors and justices, and imposes new duties upon the executive and the citizen, it has thereby become necessary to re-enact and republish the various laws relating to them all as now modified, we shall find, before the act is completed, that it not only embraces a large portion of the general laws of the state, but also that it has become obnoxious to the other provisions referred to, because embracing a large number of objects, only one of which can be covered by its title." *Id,* pp 496–497.

Sections 6, 8, 8a, 9 and 14 appear *seriatim* in the home rule cities act. It is not uncommon for one section of an act to modify, expressly or by implication, another section of the same act. Any amendment of a section of an act may affect other sections of the same act (or indeed of another act) which are not amended, but it has never been thought necessary on that account to reenact the entire act (or other act).

On the same principle that makes it unnecessary to enumerate "all acts and parts of acts inconsistent" *(Mahaney, supra)* with the provision of a superseding act, there was no need to excise the portions of §§ 6, 8, 8a and 14 superseded by the 1970 amendment of § 9.

The Constitution does not require, nor would a useful purpose be served by reenacting and republishing the defunct portions of §§ 6, 8, 8a and 14;

the Constitution does not require a useless gesture. Nor does it require that the defunct portions be excised from those sections and the viable portions reenacted and republished. *People ex rel Drake v Mahaney, supra; Mok v Detroit Building & Savings Ass'n No 4, supra; Alan v Wayne County, supra.*

While this non-express method of legislating may be "confusing" to some and appear to be "lazy", legislation cannot on that ground be invalidated.[22]

The townships further assert that there are a number of ambiguities and constructional issues posed by the failure of the Legislature to repeal all the laws concerning incorporation, consolidation and annexation and to start afresh with a comprehensive enactment covering the entire subject matter. Experience teaches that ambiguities and constructional difficulties are inevitable however carefully the Legislature proceeds. Those difficulties do not rise to constitutional dimensions affecting the validity of legislation because they are posed in terms of asserted conflict between the provisions of different acts or sections of the same act as a result of an amending act. If legislation could so easily be overturned, the claims of confusion, lazy legislation and conflict between sections and acts would be an increasing source of litigation, burden and embarrassment to the courts, the Legislature and the public.

III

The townships and individual plaintiffs additionally contend:

A. The 1968 act denies equal protection of the

[22] *See* fn 10, *supra*.

laws to persons residing in an area containing 100 persons or fewer, who are denied a referendum on a commission order although a referendum is required where more than 100 persons reside in the area;

B. The 1968 act does not provide adequate standards;

C. Proceedings before the commission are a "contested case" within the meaning of the Administrative Procedures Act, and the provisions of that act were not followed;

D. The cities gerrymandered the boundaries to avoid a referendum, and a review of the record in light of the statutory criteria demonstrates that the evidence does not "substantially" support the commission's rulings or its determinations that the annexations were reasonable and should be approved.[23]

These contentions ignore the unique nature of annexation proceedings. No city, village, township or person has any vested right or legally protected interest in the boundaries of such governmental units. The Legislature is free to change city, village and township boundaries at will. This was settled for Federal constitutional purposes in *Hunter v Pittsburgh,* 207 US 161, 178–179; 28 S Ct 40; 52 L Ed 151 (1907), and the principles there established have been observed in subsequent litigation in the courts of this and other states. See *Village of Kingsford v Cudlip, supra,* p 148. Similarly, see *Lansing School District v State Board of Education,* 367 Mich 591; 116 NW2d 866 (1962);

[23] The townships further contend that in the Midland case the commission failed to base its decision on the criteria of the 1968 act; in the Brighton case the commission's refusal to revise the boundaries to include the balance of the so-called BUGA area was not supported by the evidence, contrary to Const 1963, art 6, § 28; and in the Novi case the commission's refusal to revise the boundaries consolidating the two Novi petitions was contrary to law.

The Detroit Edison Co v East China Twp School Dist No 3, 247 F Supp 296 (ED Mich, 1965), *aff'd* 378 F2d 225 (CA 6, 1967); 56 Am Jur 2d, Municipal Corporations, § 50, p 108 and § 57, p 113.

In *Hunter* the City of Pittsburgh had annexed the City of Allegheny. The statute provided for a referendum with the votes of both cities being aggregated. Pittsburgh, larger than Allegheny, voted in favor of annexation and Allegheny voted against it. Allegheny residents claimed that the procedures violated the Due Process Clause. The Court responded that the Legislature could have constitutionally changed the boundaries without an election:

"Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do

as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it." *Id,* pp 178–179.

A. EQUAL PROTECTION

In the instant annexations fewer than 100 persons resided in the territories to be annexed.

The townships and individual plaintiffs, acknowledging the principles enunciated in *Hunter,* assert that while the Legislature may provide for annexation without an election it is violative of the Equal Protection Clause to provide for a referendum where more than 100 persons reside in the territory to be annexed and deny a referendum where 100 persons or fewer reside in the territory.

In *Detroit Edison Co v East China Twp School Dist No 3, supra,* where it was contended that a school district should have proceeded by consolidation (subject to referendum in the annexing and annexed districts) rather than annexation (not subject to referendum in the annexing district), the district court rejected an equal protection challenge. The Court of Appeals affirmed based on the abstention doctrine, adding that the district court was correct on the merits. Similarly see *Lansing School Dist v State Board of Education, supra,* p 599.

We are of the opinion that the challenged classi-

fication bears a substantial relation to the object of the legislation:[24] providing a means appropriate to the resolution of disagreements concerning annexation of territory to a city.[25]

Some territory annexed will be sparsely populated or unpopulated while other territory will be more heavily populated. The challenged classification, responsive to that factual difference, tends to prevent venal abuses which there is reason to believe may occur if few persons (or a small group of persons) have absolute power to prevent an annexation economically advantageous to other persons or the community at large.[26] See *Weber v Thousand Oaks City Council,* 9 Cal 3d 950; 109 Cal Rptr 553; 513 P2d 601 (1973), sustaining against an equal protection challenge a classification providing for a referendum if the area has more than 12 resident registered votes but dispensing with a referendum where there are fewer voters. It was not violative of the Equal Protection Clause to draw a line, and the line drawn (at 100) was not unreasonable.

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[24] *Manistee Bank & Trust Co v McGowan,* 394 Mich 655, 668; 232 NW2d 636 (1975).

[25] In so holding we do not reach the city contention that the Equal Protection Clause does not apply to an annexation.

[26] If more than 100 persons reside in the territory to be annexed and a petition containing the signatures of at least 25% of the registered voters residing in that territory, in the annexing city, or in the balance of the township, is filed, the commission is required to order a referendum on the question of annexation to be held in each area for which a valid petition is filed. If a majority of the voters voting on the question in each area in which a referendum is held, voting separately, approves the annexation, the annexation becomes effective, otherwise it does not take effect. MCLA 117.9(5); MSA 5.2088(5).

The challenged classification is based on the number of persons residing in the area, not the number of voters. The number of registered voters in the area to be annexed will perforce be considerably fewer than 100 and the number voting in an election is likely to be far fewer than the number registered to vote; a majority of those voting may be as few as 20 or even fewer.

B. STANDARDS

The 1968 act, as incorporated in the home rule cities act by the 1970 amendment,[27] provides for a public hearing at which the Commission shall consider the "reasonableness" of the proposed annexation based upon the "criteria" set forth in § 9 of the 1968 act:

"Criteria to be considered by the commission in arriving at a determination shall be:

"(a) Population; population density; land area and land uses; assessed valuation; topography, natural boundaries and drainage basins; the past and probable future urban growth, including population increase and business, commercial and industrial development in the area. Comparative data for the incorporating municipality, and the remaining portion of the unit from which the area will be detached shall be considered.

"(b) Need for organized community services; the present cost and adequacy of governmental services in the area to be incorporated; the probable future needs for services; the practicability of supplying such services in the area to be incorporated; the probable effect of the proposed incorporation and of alternative courses of action on the cost and adequacy of services in the area to be incorporated and on the remaining portion of the unit from which the area will be detached; the probable increase in taxes in the area to be incorporated in relation to the benefits expected to accrue from incorporation; and the financial ability of the incorporating municipality to maintain urban type services in the area.

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[27] "The commission shall review proposed incorporations taking into consideration the criteria established by section 9. * * * [T]he commission shall hold a public hearing at some convenient place in the area proposed to be incorporated, at which public hearing the reasonableness of the proposed incorporation based upon the criteria established in this act shall be considered. * * *." 1968 PA 191; MCLA 123.1008; MSA 5.2242(8).

1970 PA 219. *See* fn 18, *supra,* for text of MCLA 117.9(2); MSA 5.2088(2).

"(c) The general effect upon the entire community of the proposed action; and the relationship of the proposed action to any established city, village, township, county or regional land use plan." 1968 PA 191; MCLA 123.1009; MSA 5.2242(9).

In *State Highway Commission v Vanderkloot*, 392 Mich 159, 166; 220 NW2d 416 (1974), this Court held "that the standard 'necessity' in the context of the highway condemnation act is a sufficient standard and a constitutional delegation of authority". We similarly conclude that "reasonableness," determined based on the statutorily enumerated criteria, is a sufficient guideline for the exercise of commission discretion.[28]

In this context it is again relevant that the power here delegated does not involve any vested right or legally protected interest. We judge the adequacy of the criteria and standard with that in mind.[29] The annexation question is essentially political, and political considerations cannot be avoided whether the power is exercised by the Legislature itself or by an authority to which the power is delegated. The ultimate decision will be a value judgment based on the particular facts and circumstances of the annexation under consideration. It would unduly inhibit both the exercise of the Legislature's prerogative to delegate the power to decide on annexations and the function of the commission to require greater particularity in the explication of criteria or standards.

[28] In *Osius v St Clair Shores*, 344 Mich 693, 698; 75 NW2d 25; 58 ALR2d 1079 (1956), where the Court indicated that "the standards prescribed for guidance [should be] as reasonably precise as the subject matter requires or permits," no standard had been prescribed. *See Florka v Detroit*, 369 Mich 568, 581; 120 NW2d 797 (1963).

[29] Our conclusion makes it unnecessary to readdress the non-delegation/standards doctrine. *See People v Fields (On Rehearing)*, 391 Mich 206, 224; 216 NW2d 51 (1974) (LEVIN, J., dissenting); *People v Peters*, 397 Mich 360, 368; 244 NW2d 898 (1976).

C. CONTESTED CASE

The townships contend that the procedures for contested cases of the Administrative Procedures Act of 1969 apply to commission proceedings and that those procedures were not followed in these annexation proceedings.[30] That act provides:

" 'Contested case' means a proceeding, including but not limited to rate-making, price-fixing and licensing, in which a determination of the *legal rights*, duties or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal from its decision is taken to another agency, the hearing and the appeal are deemed to be a continuous proceeding as though before a single agency." 1969 PA 306; MCLA 24.203(3); MSA 3.560(103)(3) (emphasis supplied).[31]

We have already expressed our conclusion, based on the *Hunter* principle, that no governmental

[30] The 1968 act provides (MCLA 123.1004; MSA 5.2242[4]) for a public hearing and requires the state members of the commission to make rules and regulations and prescribe procedures, including rules for public hearings; such rules and regulations are required to be promulgated in accordance with the administrative procedures acts, 1943 PA 88, MCLA 24.71 *et seq.*; MSA 3.560(7) *et seq.* and 1952 PA 197, MCLA 24.101 *et seq.*; MSA 3.560(21.1) *et seq.* The 1968 act further provides (MCLA 123.1018; MSA 5.2242[18]) that every final decision of the commission shall be subject to judicial review in a manner prescribed in the 1952 act. The 1952 act was superseded by the Administrative Procedures Act of 1969, 1969 PA 306; MCLA 24.201 *et seq.*; MSA 3.560(101) *et seq.*

Subsequent to the instant annexation hearings the commission promulgated general rules which seek to secure the right to a public hearing provided by the 1968 act (1974 AACS, R 123.1 *et seq.*).

[31] "Contested case" was defined in the 1952 Administrative Procedures Act, extant when the 1968 act was enacted as follows:

"(3) 'Contested case' means a proceeding before an agency in which the legal rights, duties or privileges of a specific party or specific parties are required by law or constitutional right to be determined after an opportunity for an agency hearing." MCLA 24.101; MSA 3.560(21.1).

authority or person has any legal right in the boundaries of a city, village or township. An annexation proceeding is not a "contested case" even though the commission must hold a public hearing and representatives of a city, village or township and other persons have a right to be heard at such a hearing before the commission makes its determination. That procedural right does not create any substantive legal right in a "named party" and, hence, the "legal rights" of a "named party" are not required by the 1968 act and the 1970 amendment to be determined after an opportunity for an evidentiary hearing within the meaning of the Administrative Procedures Act.

The Administrative Procedures Act was designed to provide procedural protection where a personal right, duty or privilege is at stake. Affording the public at large an opportunity to be heard does not create a personal right in the decision; certain decisions are so largely legislative in character, affecting the populace at large without differentiation and not fundamentally a particular person or persons, that no substantive personal right is to be implied from the opportunity to be heard.[32]

D. JUDICIAL REVIEW

The 1968 act provides for judicial review pursu-

[32] *See Scarlett v Jackson Town Council, Teton County,* 463 P2d 26 (Wyo, 1969); *Sherwin v State Highway Commissioner,* 364 Mich 188, 196; 111 NW2d 56 (1961).

Compare Emmet County v State Tax Commission, 397 Mich 550; 244 NW2d 909 (1976), where this Court held that inter-county equalization was not a "contested case" within the meaning of the Administrative Procedures Act although the inter-county equalization statute provides for a hearing. MCLA 209.4; MSA 7.604.

See, generally, 1 Davis, Administrative Law Treatise, § 7.04, p 420 and § 7.06, p 429.

ant to the Administrative Procedures Act.[33] The townships additionally rely on the constitutional provision for judicial review of administrative action.[34]

The Administrative Procedures Act provides for judicial review of errors of law and, paralleling the constitutional provision, for a determination whether the administrative action is supported by "competent, material and substantial evidence on the whole record". MCLA 24.306(d); MSA 3.560(206)(d).

The key phrase "substantial evidence" has been construed by this Court to require

"a thorough judicial review of administrative deci-

[33] *See* fn 30, *supra.*

The Administrative Procedures Act provides:

"(1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

"(a) In violation of the constitution or a statute.

"(b) In excess of the statutory authority or jurisdiction of the agency.

"(c) Made upon unlawful procedure resulting in material prejudice to a party.

"(d) Not supported by competent, material and substantial evidence on the whole record.

"(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

"(f) Affected by other substantial and material error of law.

"(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings." 1969 PA 306, § 106; MCLA 24.306; MSA 3.560(206).

[34] "All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law." Const 1963, art 6, § 28.

sion, a review which considers the whole record—that is, both sides of the record—not just those portions of the record supporting the findings of the administrative agency. Although such a review does not attain the status of *de novo* review, it necessarily entails a degree of qualitative and quantitative evaluation of evidence considered by an agency. Such review must be undertaken with considerable sensitivity in order that the courts accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views. Cognizant of these concerns, the courts must walk the tightrope of duty which requires judges to provide the prescribed meaningful review." *Michigan Employment Relations Commission v Detroit Symphony Orchestra, Inc,* 393 Mich 116, 124; 223 NW2d 283 (1974).

The townships contend that to avoid a referendum the cities gerrymandered the boundary of the territory to be annexed so that the number of residents would not exceed 100, and that a review of the record in light of the statutory criteria demonstrates that the evidence does not "substantially" support the commission's rulings or its determinations that the annexations were reasonable and should be approved.

It is again pertinent that there are no "private rights" (see footnote 34) in the boundaries of cities, villages or townships; accordingly, the constitutional provision concerning judicial review of administrative action does not limit commission proceedings.

Resolution of a controverted annexation unavoidably involves political considerations and the exercise of a large measure of discretion. Evaluation of the record and of the commission's balancing of the criteria and determination of reasonableness implicates the merits of the proposed an-

nexation and poses considerable risk of drawing the judiciary into the resolution of what continues to be—despite the adoption of the administrative format—essentially a political question.[35]

No vested right or legally protected interest being involved, the judiciary ought to be especially circumspect in reviewing commission rulings and determinations.

On our consideration of whether the commission's procedures, rulings and determinations in these cases were consistent with constitutional and statutory requirements and whether the record adequately supports the orders of annexation, we conclude that, with the exception of the Novi annexation, there is no error and the orders of annexation shall be implemented in accordance with the statute.

Midland Township

The commission approved a Midland annexation petition for the site of a proposed Consumers Power nuclear power plant. (See drawing attached.) There were no residents of the power plant site. More than 100 persons resided in the area covered by another annexation petition.

The proposed power plant will supply electricity and steam to Dow Chemical Company plants located in the City of Midland. When the nuclear power plant is placed in operation, Dow will close eight power plants located in the city, resulting in the city's loss of $8.6 to $12.6 million in state equalized valuation.

The township levies 1 mill and the city 11.3 mills. If the plant is in the township it will gener-

[35] *Cf. American Independent Party v Secretary of State,* 397 Mich 689; 247 NW2d 17 (1976).

ate tax revenues of $275,000 for the township on an estimated equalized value of $275 million. If the plant is in the city, $1,925,000 would be generated for the city at a reduced millage of 7 mills. The difference in the revenue generated, $1,650,000, would, the Commission concluded, not only "be an asset to the city but to the whole region".

A reduction of the tax rate to 7 mills, said the commission, would enable Dow "to be much more cost competitive than at the present". Dow is the "economic life-blood of a multi-county area surrounding the city". Dow operations in the city are comparatively disadvantaged "due to the level of *ad valorem*" taxes. Reestablishing the competitiveness of Dow's Midland operations "is essential for future growth in the area and the maintenance and expansion of the job market in the Greater Midland area".

The commission acknowledged that the need for services such as water, sewer, fire and police protection were not major factors in its decision as the power plant would provide many of its own internal services and call on the city or township to act only in a backup capacity.

Midland Township contends that when compared with the statutory criteria in subsections (a) and (b) (see part III B, *supra*, for text), the findings of the commission do not support the commission's decision; that the subsection (b) criterion, the probable increase in taxes in the area in relation to the benefits expected to accrue "would, if considered, suggest that the annexation should not take place" and that the commission—relying on the criterion set forth in subsection (c): "[t]he general effect upon the entire community of the proposed action"—improperly "based its result fundamentally

on a decision to award the tax base to the City of Midland," and that "[t]o maintain that the commission may ignore the other criteria and use this provision in this way would be to say that the commission can act on any basis it deems suitable from a policy standpoint."

Merely because some criteria were factually inapplicable or were found by the commission to be of less importance than other criteria does not mean that the commission "ignored" relevant criteria. The commission may regard a particular criterion to be of decisive importance outweighing all other criteria. The commission's decision to "award the tax base" to the City of Midland is supported by record evidence, is not arbitrary and is consistent with the statutory criteria and the standard of reasonableness.

Novi Township

The Novi petition covers seven separate parcels which earlier had been detached from the Village of Novi in circuit court proceedings (see part III F, *infra*). The seven parcels are located in widely separated sectors on the city's borders. (See attached map.) Fewer than 100 persons reside in the seven parcels combined.

The statute authorizes the commission to "revise the boundaries of the area"[38] covered by a petition. Novi Township requested that the area covered by the city's petition be expanded to include the balance of the township (Brookland Farms Subdivision, also shown on the attached map), where more than 100 persons resided.

The commission ruled that it could not revise the boundaries to include the eighth parcel be-

[38] MCLA 123.1010; MSA 5.2242(10).

cause its authority did not include "boundary adjustments or additions of land not contiguous with lands proposed for annexation".

While it is clear "in the light of the purpose sought to be served and the practical aspects of annexation"[37] that territory annexed to a city must adjoin the city,[38] just as there is no requirement that land proposed for annexation adjoin any other land included in the petition, a commission revision extending petition boundaries is not limited to land adjoining land proposed for annexation in the petition. The commission, in exercise of its broad-ranging power and discretion, may revise the boundaries set forth in a petition to include any land that might originally have been included in the petition or to exclude land that was included.

The Novi annexation illustrates that the impact of annexation on non-contiguous land may make it appropriate to revise the boundaries to include such land. In approving this annexation the commission proceeded on the assumption that its only options were to approve or disapprove the petition as filed and that it did not have the third option of approving the petition with a revision of the boundaries to include the non-contiguous Brookland Farms Subdivision. Since we have no way of knowing whether the commission would have included the subdivision if it was aware that it had the authority to do so, it is necessary to remand the Novi petition to the commission for reconsideration.

We do not wish to be understood as intimating that because the commission found that approval

[37] *Genesee Twp v Genesee County*, 369 Mich 592, 602; 120 NW2d 759 (1963).

[38] *Id. Similarly, see Owosso Twp v Owosso*, 385 Mich 587; 189 NW2d 421 (1971).

of annexation with the boundaries sought by the city could pose serious problems for the residents of the subdivision[39] that the commission should revise the boundaries to include the subdivision.

Brighton Township

An area contiguous to the City of Brighton, separated from the rest of the township by Interstate 96, had been designated the "Brighton Urban Growth Area". (See drawing attached.) The city's annexation petition covered more than half of the BUGA area, including a recently developed shopping center, but fewer than 100 persons resided in the area. More than 100 persons resided in the entire BUGA area.

Brighton Township contends that "the sole purpose of thus dividing the BUGA area was to gerrymander the petition to include less than 100 residents, thus forestalling the possibilities of a referendum".

The township asked the commission to revise the boundaries to include the entire BUGA area and contends that the commission's rationale for not revising them is insubstantial.

The claim that the commission should have revised the boundaries is related to the claim that the boundaries described in the petition were gerrymandered to limit the territory included so that there would be fewer than 100 residents and thereby obviate a referendum.

[39] In approving the annexation of the seven parcels the Commission said that it had examined the effect of the proposed annexation on the township and recognized that the loss of a major portion of its tax base "could present serious problems for the residents of Brookland Farms Subdivision No. 1 which would become the remainder of the township should the annexation be accomplished".

Gerrymandering

In each case the city's petition covered an area containing fewer than 100 residents, and the townships responded seeking to have the boundaries revised or petitions consolidated so that there would be more than 100 residents and a referendum would be required.[40]

The Legislature may reasonably determine that territory containing relatively few or no residents should be subject to annexation, and that there is need for a classification based on population to preclude a referendum in such a case and allow it where the territory to be annexed is more populous. (See part III A, *supra.)* City and township strategies based on such a classification are unavoidable. In general, the city will seek to limit the area proposed for annexation so that there are insufficient residents for a referendum and the township will seek to extend the area to require a referendum.

The motive or purpose of the city or township in drawing the proposed boundaries or in requesting a revision of boundaries is not material. The question is not one of motive or purpose, but whether the boundaries as drawn or revised and the annexation are reasonable. The reasonableness of the boundaries as originally proposed or as revised by the commission and of the proposed annexation does not depend on whether they were drawn or appear to have been drawn to require or preclude a referendum.

It will often be possible to draw the boundaries

[40] Midland Township sought to unite the separate annexation petitions, covering the proposed power plant and the area surrounding it. The commission said that it recognized that there was a connection between the two petitions and that they could be united. It concluded that the best interests of the whole Midland community would be served by considering them separately.

to preclude a referendum and likewise to alter them to require one. The commission need not revise the boundaries because approval of the proposed annexation would have an adverse effect on the township, the boundaries would also be reasonable as proposed to be revised and a referendum may prevent annexation. The adverse effect on the township is but a factor to be considered in deciding whether the petition should be approved with the original boundaries or with revised boundaries or not at all.

The commission's decisions approving the Midland, Brighton and Novi annexations with boundaries as originally proposed by the cities were not violative of the statutory standard, reasonableness; the Novi annexation petition is being remanded because the commission did not consider whether it might not also be reasonable or preferable to revise the boundaries to include the Brookland Farms Subdivision.

E. PUBLIC MEETINGS ACT

The townships further contend that the provisions of the 1968 public meetings act were ignored.[41] The act defines "public meeting" as follows:

> " 'Public meeting' means that part of any meeting of a board during which it votes upon any ordinance, resolution, motion or other official action proposed by or to the board dealing with the receipt, borrowing or disbursement of funds or the acquisition, use or disposal of services or of any supplies, materials, equipment or other property or the fixing of personal or property rights, privileges, immunities, duties or obligations of any person or group of persons. The term 'public meeting' shall not mean any meeting, the publication of the

[41] This act has been superseded by the 1976 Open Meetings Act, 1976 PA 267; MCLA 15.261 *et seq.;* MSA 4.1800(11) *et seq.*

facts concerning which would disclose the institution, progress or result of an investigation undertaken by a board in the performance of its official duties." 1968 PA 261; MCLA 15.251(2); MSA 4.1800(1)(2).

The hearing before the commission did not concern the "receipt, borrowing or disbursement of funds or the acquisition, use or disposal of services or of any supplies, materials, equipment or other property". Nor, for reasons already stated, did it concern "the fixing of personal or property rights, privileges, immunities, duties or obligations of any person or group of persons".

F. DISCONNECTED LAND

Lastly, Novi Township contends that land disconnected from the Village of Novi by court orders entered pursuant to the farmland disconnection act[42] was not properly annexed to the City of Novi.

The township acknowledges that disconnection is not necessarily permanent and that new facts might arise which could render a disconnection order obsolete. A disconnection order does not create a vested right or legally protected interest beyond the power of the Legislature to provide for annexation of the land disconnected. Disconnected land is subject to annexation by a city pursuant to the provisions of the 1970 amendment. Exercise by the commission of the power to annex disconnected land does not constitute a collateral attack on the judgment of the circuit court disconnecting the land.

Reversed. The orders of the commission in Midland Township and Brighton Township shall be effected as of the earliest practicable date; those cases are remanded to the circuit courts for the sole purpose of implementing the commission's

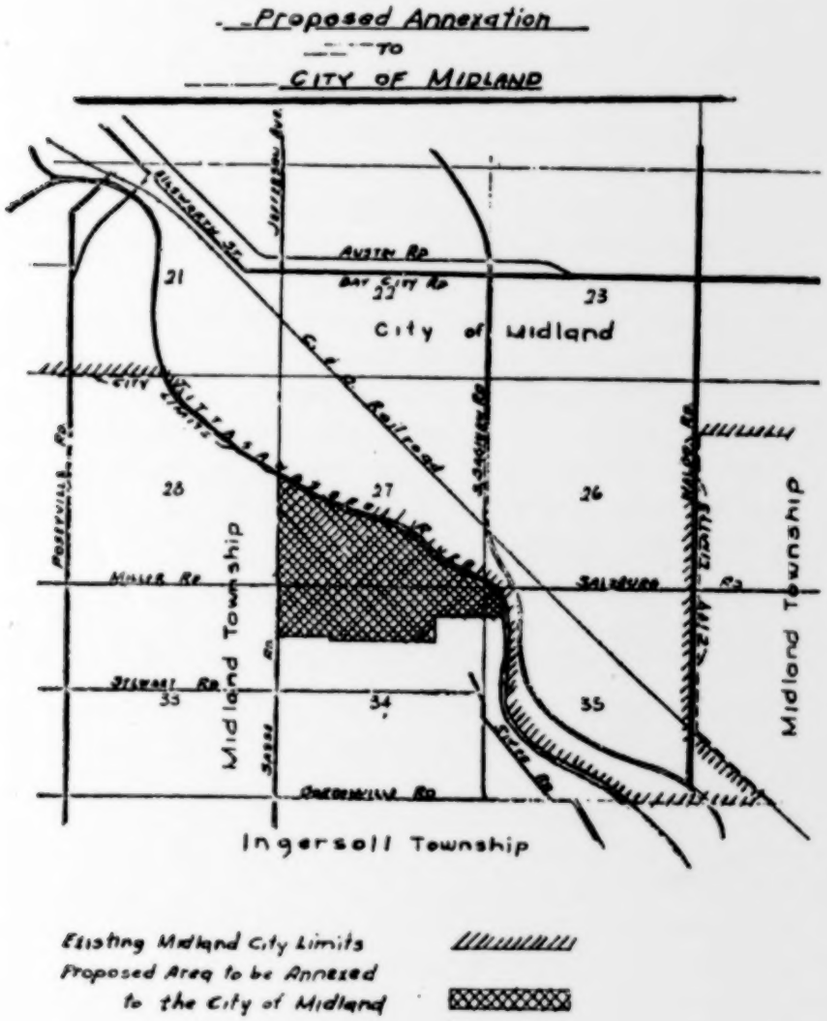
[42] MCLA 123.31 *et seq.*; MSA 5.3561 *et seq.*

orders in accordance with the statutes.[43] The Novi Township petition is remanded to the commission for further proceedings consistent with this opinion. No costs, a public question.

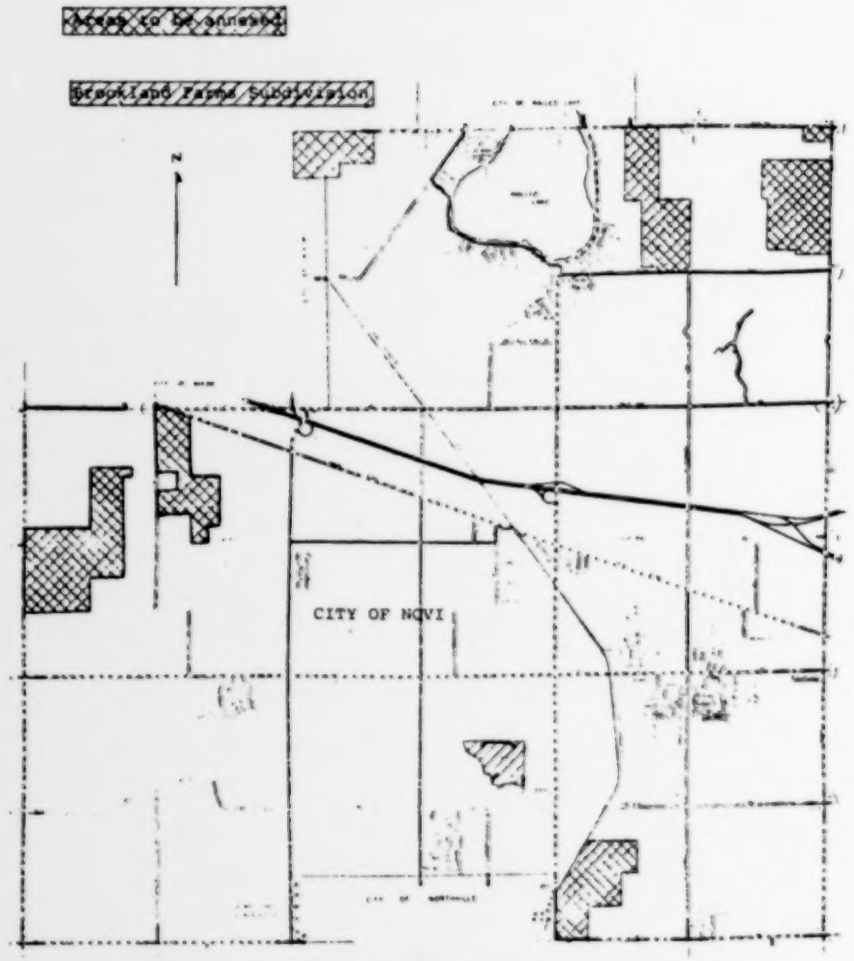
KAVANAGH, C. J., and WILLIAMS, COLEMAN, FITZGERALD, and RYAN, JJ., concurred with LEVIN, J.

BLAIR MOODY, JR., J. I concur in the majority's result in these consolidated cases. However, I cannot endorse without reservation all the analysis developed in the principal opinion; specifically I do not subscribe to all the reasoning and language contained in Part II (B) and Part III (A), (B), and (D) of this opinion.

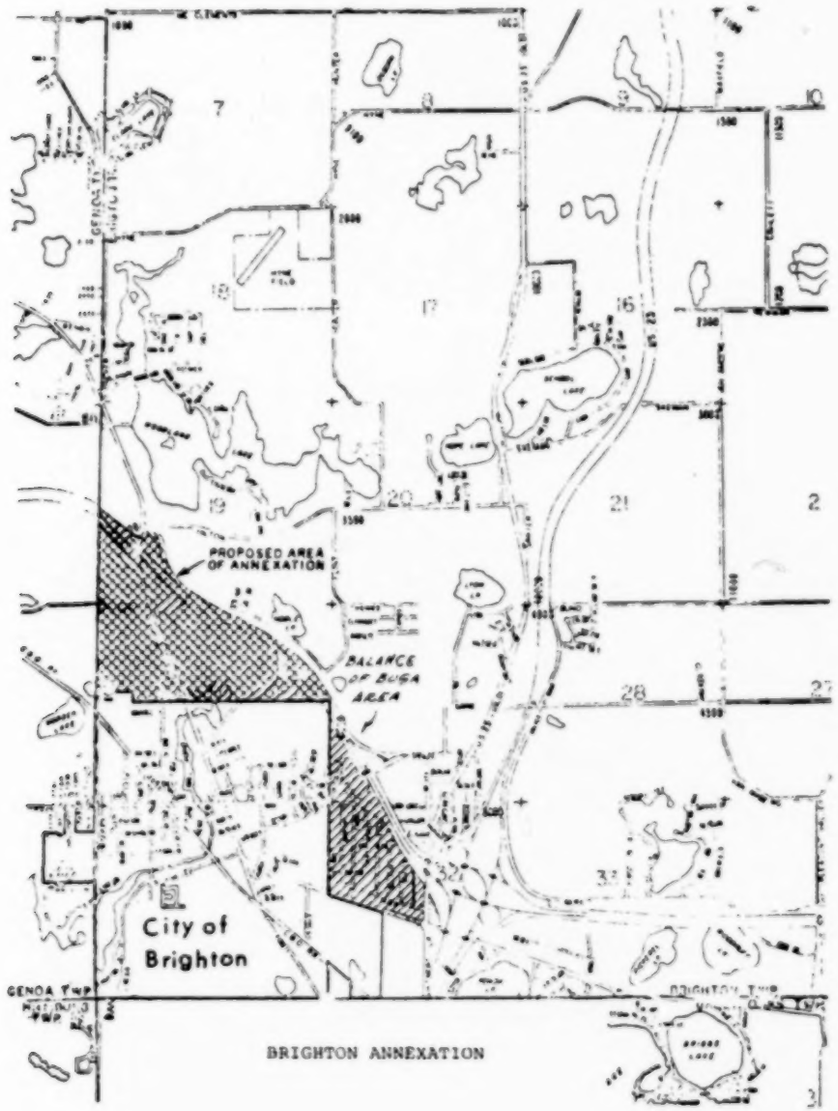
[43] It appears both from the briefs and the responses of counsel for the parties during oral argument that the appropriate effective date may depend on the particular facts and circumstances of the cases.



MIDLAND ANNEXATION



NOVI ANNEXATION



BRIGHTON ANNEXATION

EXHIBIT G

STATE OF MICHIGAN

IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, a Municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON, **Plaintiffs-Appellees,** **v** **MICHIGAN STATE BOUNDARY COMMISSION,** **Defendant-Appellant,** **and** **CITY OF MIDLAND, a Municipal corporation,** **Intervening Defendant-Appellee.**	**No. 57732**

APPLICATION FOR REHEARING AND STAY ORDER

BRIEF IN SUPPORT

ORAL ARGUMENT REQUESTED

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Dated: November 14, 1977

(Continued on inside cover)

PRINTED BY SPEAKER-HINES AND THOMAS, INC., LANSING, MICHIGAN—1977

TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON, Plaintiffs-Appellants, v MIDLAND COUNTY BOARD OF COMMISSIONERS, a body corporate; BEN PENNER, Midland County Clerk; GERMAINE A. SMITH, Midland Township Clerk; KENNETH W. LYBOLT, Clerk of the City of Midland, and CITY OF MIDLAND, a municipal corporation, Defendants-Appellees.	No. 57720
TOWNSHIP OF NOVI, Plaintiff-Appellee, and W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, v STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF NOVI, a municipal corporation, Intervening Defendant-Appellee, and GREGORY I. DONOVAN, et al., Intervening Defendants.	No. 58242
TOWNSHIP OF NOVI, Plaintiff-Appellee, and W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, v STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF NOVI, a municipal corporation, and GREGORY I. DONOVAN, et al., Intervening Defendants.	No. 58243

(Continued on inside back cover)

TOWNSHIP OF NOVI, Plaintiff-Appellee, and W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, v STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant, and CITY OF NOVI, a municipal corporation, Intervening Defendant-Appellant, and GREGORY I. DONOVAN, et al., Intervening Defendants.	No. 58236
TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF BRIGHTON, a Michigan municipal corporation, Intervening Defendant-Appellee, and GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 58244

(Continued on back cover)

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 58245
TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN, Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant, and CITY OF BRIGHTON, a Michigan municipal corporation, Intervening Defendant-Appellant, and GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 58223

i

STATE OF MICHIGAN

IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, et al., Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF MIDLAND, et al., Intervening Defendant-Appellee.	Supreme Court Nos. 57732 57720 58242 58243 58236 58244 58245 58223

APPLICATION FOR REHEARING AND STAY ORDER

Michigan Townships, Plaintiffs-Appellees, by their attorneys, make an Aplication for Rehearing pursuant to GCR 1963, 864.4, and move for a Stay Order and state to this Honorable Court:

1. This Honorable Court, on October 24, 1977, in the above-entitled matter, did rule contrary to the prayers of Plaintiffs-Appellees, contrary to the law as argued by attorneys for Plaintiffs-Appellees. In particular, Plaintiffs were denied equal protection of the law and due process under both the United States Constitution and Michigan Constitution.

2. In addition to the issues raised in pleadings before this Court, Plaintiffs-Appellees should have prevailed because the State Boundary Commission is organized contrary to the Constitution of the State of Michigan and the United States Constitution. The State Boundary Commission performs legislative functions and three of its members are

ii

appointed by the Governor (MCLA 123.1002) and two by the probate judge of the county involved (MCLA 123.1005); thus violating separation of powers as guaranteed by the Michigan Constitution (art 3, §2).

The United States Constitution guarantees the people of each state a republican form of government (US Const, art IV, §4), which was violated when the separation of powers for the creation of the State Boundary Commission was violated.

3. These issues raise questions that should be decided by this Honorable Court in favor of the Townships, Plaintiffs-Appellees, or, in the alternative, this Court should grant a Stay Order so Plaintiffs-Appellees can pursue their rights either on direct appeal to the United States Supreme Court or to the United States Federal District Court in Michigan on issues not raised in the original pleadings in this matter.

4. The declaration of the unconstitutionality of the State Boundary Commission should be applied for these cases and prospectively, not retroactively.

WHEREFORE, This Honorable Court is asked to grant the following relief:

1. Grant the relief prayed for by the Townships, Plaintiffs-Appellees, in the above-entitled causes based on the pleadings filed therein.

2. Grant the same relief based upon the new constitutional issues raised in this Motion and by the Memorandum Brief in support thereof.

3. In the alternative, grant a Stay Order until Townships, Plaintiffs-Appellees, have exhausted their legal remedies by

iii

appeal of the Opinion of this Honorable Court to the United States Supreme Court, or filed an independent action in the United States Federal District Court in Michigan.

Respectfully submitted,

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Dated: November 14, 1977

v

STATE OF MICHIGAN

IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, et al., Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF MIDLAND, et al., Intervening Defendant-Appellee.	Supreme Court Nos. 57732 57720 58242 58243 58236 58244 58245 58223

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING AND STAY ORDER

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Dated: November 14, 1977.

vii

TABLE OF CONTENTS

Page

Index of Authorities x

Statement of Questions Involved xiii

Statement of Facts 1

Argument

I. ALL ARGUMENTS OF THE TOWNSHIPS, PLAINTIFFS-APPELLEES IN THE PLEADINGS IN THE CAUSES, ARE INCORPORATED BY REFERENCE 3

II. THE STATE BOUNDARY COMMISSION IS UNCONSTITUTIONAL 3

1. The State Boundary Commission performs legislative functions 3
2. The appointment by the Governor of three members to the Boundary Commission is unconstitutional 9
3. The appointment by the probate judge of members to the Boundary Commission is unconstitutional because of invasion of the judicial into the legislative branch of government 11
4. The constitutional right of referendum on legislation is denied by the State Boundary Commission 16
5. The State Boundary Commission violates article 7, section 14 of the Michigan Constitution 18

Page

6. The structure of the Boundary Commission violates article 1, sections 1 and 2 of the Michigan Constitution 24

III. THE ACTIONS OF THE STATE BOUNDARY COMMISSION ARE UNCONSCIONABLE AS WELL AS UNCONSTITUTIONAL 25

IV. THE MICHIGAN STATE BOUNDARY COMMISSION VIOLATES THE UNITED STATES CONSTITUTION 27

1. The State Boundary Commission, by having the executive and judicial branches of government usurp the duties of the legislative branch is, *per se*, a violation of the republican form of government 28

2. The Boundary Commission Act denies both the republican form of government of Art IV, §4, and equal protection of laws as guaranteed by the 14th Amendment to the U.S. Constitution 32

V. THE RELIEF IN THIS MATTER SHOULD BE APPLICABLE TO THESE CASES AND PROSPECTIVE, NOT RETROACTIVE 33

VI. A STUDY OF THE CASES CITED BY THIS HONORABLE COURT IN THIS CAUSE SHOWS THAT NONE OF THEM REFER TO THE SEPARATION OF POWERS AND REPUBLICAN FORM OF GOVERNMENT ISSUES RAISED IN THIS BRIEF 38

Page

VII. IN THE ALTERNATIVE, TOWNSHIPS, PLAINTIFFS-APPELLEES, CAN SEEK RELIEF IN THE UNITED STATES SUPREME COURT OR THE UNITED STATES DISTRICT COURT OF MICHIGAN 38

1. Relief in the United States Supreme Court 38

2. In the alternative, Townships, Plaintiffs-Appellees, can file new pleadings in a United States District Court in the state of Michigan having jurisdiction over one or more of the townships involved or the State Boundary Commission on questions not raised in pleadings prior to this before the Michigan State Supreme Court 39

VIII. IN THE ALTERNATIVE, IF THIS COURT DOES NOT GRANT A REHEARING AND THE RELIEF REQUESTED BY TOWNSHIPS, PLAINTIFFS-APPELLEES, A STAY ORDER SHOULD BE GRANTED GIVING TOWNSHIPS, PLAINTIFFS-APPELLEES, AN OPPORTUNITY AND TIME TO GO TO THE UNITED STATES DISTRICT COURT OR THE UNITED STATES SUPREME COURT 40

Conclusion and Summary 41

Relief 41

Affidavit of Robert M. Edwards 43

Pages

INDEX OF AUTHORITIES

MICHIGAN CASES

Buback v Governor, 380 Mich 209; 156 NW2d 549 (1968) 16

Dearborn Twp v Twp Clerk, 334 Mich 673; 55 NW2d 201 (1952) 30

Goethal v Kent County Supervisors, 361 Mich 104; 104 NW2d 794 (1960) 7, 12

Hays v University of Michigan Regents, 52 Mich App 605 (1974); 393 Mich 756 (1975) 25

In Re Manufacturer's Freight Forwarding Co, 294 Mich 57; 292 NW 678 (1940) 8

People v Dettenthaler, 118 Mich 595; 77 NW 450 (1898) 10

People v Fields, 391 Mich 206; 216 NW2d 51 (1974) 35, 38

Wood v State Administrative Board, 255 Mich 220; 238 NW 16 (1931) 10

OUT OF STATE CASES

Lemon v Kurtzman, 411 US 192; 93 S Ct 1463; 36 L Ed 2d 151 (1973) 26, 33

North Dakota State Board of Pharmacy v Snyder's Drug Stores, Inc, 414 US 156; 94 S Ct 407; 38 L Ed 2d 379 (1973) 39

Pope v Atlantic CLR Co, 345 US 379; 73 S Ct 749; 97 L Ed 1094 (1953) 39

Pages

Reynolds v Sims, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1962) 25

Van Sickle v Shanahan, 511 P2d 223; 212 Kan 436 (1974) 28, 30

MICHIGAN CONSTITUTIONAL PROVISIONS

Const 1963, art 1, §1 24

Const 1963, art 1, §2 24

Const 1963, art 2, §9 ..... 2, 16

Const 1963, art 4, §33 2

Const 1963, art 7, §14 ..... 2, 18

UNITED STATES CONSTITUTIONAL PROVISIONS

US Const, art III, §1 38

US Const, art III, §2 38

US Const, art IV, §4 ..... 2, 16

US Const, Am XIV 3, 19

STATUTES

MCLA:

117.9 18

117.9(4) 3, 27, 23

117.9(5) 23, 24

117.9(7) (a) 32

	Pages
123.1001 *et seq*	24
123.1002	2, 10
123.1005	2, 12, 20
123.1007	20
123.1008	4
123.1009	5, 7
123.1010	7
123.1012	21
123.1012a	23
123.1013	23

United States Code:

28 USC 1257	39

STATEMENT OF QUESTIONS INVOLVED

I. ALL ARGUMENTS OF THE TOWNSHIPS, PLAINTIFFS-APPELLEES IN THE PLEADINGS IN THESE CAUSES, ARE INCORPORATED BY REFERENCE.

II. IS THE STATE BOUNDARY COMMISSION UNCONSTITUTIONAL?

Plaintiffs-Appellees say "yes."

Defendants-Appellants would say "no."

The Honorable Supreme Court did not address this question.

III. ARE THE ACTIONS OF THE STATE BOUNDARY COMMISSION UNCONSCIONABLE AS WELL AS UNCONSTITUTIONAL?

Plaintiffs-Appellees say "yes."

Defendants-Appellants would say "no."

The Honorable Supreme Court did not address this question.

IV. DOES THE MICHIGAN STATE BOUNDARY COMMISSION VIOLATE THE UNITED STATES CONSTITUTION?

Plaintiffs-Appellees say "yes."

Defendants-Appellants would say "no."

The Honorable Supreme Court did not address this question as raised in this Application for Rehearing.

V. SHOULD THE RELIEF IN THIS MATTER BE APPLICABLE TO THESE CASES AND PROSPECTIVE, NOT RETROACTIVE?

Plaintiffs-Appellees say "yes."

It is not known what Defendants-Appellants would say.

This question was not raised before this Honorable Court.

VI. DID ANY OF THE CASES CITED BY THIS HONORABLE COURT IN THIS CAUSE REFER TO THE SEPARATION OF POWERS AND REPUBLICAN FORM OF GOVERNMENT ISSUES RAISED IN THIS BRIEF?

Plaintiffs-Appellees say "no."

VII. IN THE ALTERNATIVE, CAN TOWNSHIPS SEEK RELIEF IN THE UNITED STATES SUPREME COURT OR THE UNITED STATES DISTRICT COURT OF MICHIGAN?

Plaintiffs-Appellees say "yes."

VIII. IN THE ALTERNATIVE, SHOULD A STAY ORDER BE GRANTED GIVING TOWNSHIPS AN OPPORTUNITY AND TIME TO GO TO THE UNITED STATES DISTRICT COURT OR THE UNITED STATES SUPREME COURT?

Plaintiffs-Appellees say "yes."

STATE OF MICHIGAN

IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, et al., Plaintiffs-Appellees, v **MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant,** and **CITY OF MIDLAND, et al., Intervening Defendant-Appellee.**	**Supreme Court Nos.** 57732 57720 58242 58243 58236 58244 58245 58223

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING AND STAY ORDER

STATEMENT OF FACTS

The Statement of Facts of Townships, Plaintiffs-Appellees in the above causes of action, are incorporated by reference.

In addition to those incorporated Statement of Facts, this Honorable Court, on October 24, 1977, in the above causes, did rule against Townships, Plaintiffs-Appellees, which opinion, if left to stand, can cause irreparable damage as shown by the attached Affidavit of Robert M. Edwards.

In the pleadings, files and records in this matter, certain constitutional issues were not raised, to wit:

A. The Michigan State Boundary Commission violates the Constitution of the State of Michigan.

1. Three of the members of the State Boundary Com-

mission are appointed by the Governor (MCLA 123.1002), being an unconstitutional invasion of the executive into the legislative branch of government.

2. Two members of the Boundary Commission in the county involved are appointed by the probate judge (MCLA 123.1005), being a violation of the separation of powers by injecting the judiciary into the legislative branch of government.

3. The State Boundary Commission by its very nature denies the people the constitutional right of referendum guaranteed by Const 1963, art 2, §9.

4. The unconstitutional delegation of legislative power to the State Boundary Commission denies the people the right of having legislation establishing municipal boundaries vetoed by the Governor (Const 1963, art 4, §33) and/or overridden by the legislature by two-thirds vote (Const 1963, art 4, §33).

5. The constitutional right of boards of supervisors to organize and consolidate townships (Const 1963, art 7, §14), is abrogated by the operations of the State Boundary Commission.

B. **The United States Constitution is violated.**

The peoples of the states are guaranteed a republican form of government by US Const, art IV, §4. The denial of separation of powers above stated is a violation of the United States Constitution and the State Boundary Commission therefore violates not only the Michigan Constitution, but the United States Constitution.

The denial of people in annexed areas of under 100 population for a referendum is a denial of equal protection under the 14th Amendment (MCLA 117.9(4)).

ARGUMENT

I.

ALL ARGUMENTS OF THE TOWNSHIPS, PLAINTIFFS-APPELLEES IN THE PLEADINGS IN THESE CAUSES, ARE INCORPORATED BY REFERENCE.

II.

THE STATE BOUNDARY COMMISSION IS UNCONSTITUTIONAL.

1. The State Boundary Commission performs legislative functions.

The duties of the State Boundary Commission include legislative functions as follows:

> Sec. 8. (1) The commission shall review proposed incorporations taking into consideration the criteria established by section 9.[1]
>
> (2) If the commission finds that a petition does not conform to the provisions of this act, to the provisions of Act No. 278 of the Public Acts of 1909, as amended,[2] or Act No. 279 of the Public Acts of 1909, as amended,[3] to the extent that such requirements are not superseded by this act, or to the provisions of the rules of the com-

mission, it shall so certify, stating the reasons therefor, and return the petition to the person from whom it was received together with such certificate.

(3) Not less than 60 nor more than 220 days after the filing with the commission of a sufficient petition proposing incorporation, the commission shall hold a public hearing at some convenient place in the area proposed to be incorporated, at which public hearing the reasonableness of the proposed incorporation based upon the criteria established in this act shall be considered. If section 6[4] prohibits the commission's acting on a petition because 1 or more petitions or resolutions have priority the time period provided in this section shall commence on the date upon which the prohibition ceases.

(4) The commission shall give notice of the hearing by publication in a newspaper of general circulation in the area at least 7 days before the date of the hearing, and to the clerks of municipalities and townships affected by certified mail, at least 30 days before the date of the hearing. After the commission has entered its order for a public hearing on an incorporation proposal, neither the sufficiency nor legality of the petition shall be questioned in any proceeding.

—MCLA 123.1008
Footnotes omitted

Sec. 9. Criteria to be considered by the commission in arriving at a determination shall be:

(a) Population; population density; land area and land uses; assessed valuation; topography, natural boundaries and drainage basins; the past and probable future urban growth, including population increase and business, commercial and industrial development in the area. Comparative data for the incorporating municipality, and the remaining portion of the unit from which the area will be detached shall be considered.

(b) Need for organized community services; the present cost and adequacy of governmental services in the area to be incorporated; the probable future needs for services; the practicability of supplying such services in the area to be incorporated; the probable effect of the proposed incorporation and of alternative courses of action on the cost and adequacy of services in the area to be incorporated and on the remaining portion of the unit from which the area will be detached; the probable increase in taxes in the area to be incorporated in relation to the benefits expected to accrue from incorporation; and the financial ability of the incorporating municipality to maintain urban type services in the area.

(c) The general effect upon the entire community of the proposed action; and the relationship of the proposed action to any established city, village, township, county or regional land use plan.

—MCLA 123.1009

Sec. 10. (1) After the public hearing on a proposed incorporation and review thereof by the commission, the commision may deny the proposed incorporation, approve the petition or revise the boundaries of the area proposed for incorporation and approve the proposal as revised.

(2) If an incorporation proposal is denied by the commission its order is final immediately and the sec-

retary shall transmit a certified copy thereof to the petitioner and the clerk of each city, village and township affected.

(3) If an incorporation proposal is approved with or without a revision of the boundaries the commission's order is final 45 days after the date of the order unless within that 45 days a petition for a referendum is filed with the commission which contains the signatures of at least 5% of the registered electors residing in the area to be incorporated as approved by the commission. If a petition is not filed and the commission's order becomes final the secretary shall send a certified copy of the order to the petitioner and the clerk of each county, city, village or township affected and to the secretary of state. Charter commission elections and proceedings pursuant to Act No. 278 of the Public Acts of 1909, as amended,[1] or Act No. 279 of the Public Acts of 1909, as amended,[2] shall follow.

(4) If a referendum petition is filed the commission, after determining the validity of the petition, shall order a referendum on the question of incorporation to be held in the area approved for incorporation and shall specify a date later than the referendum on which the commission's order shall become final if the proposal is approved at the referendum.

(5) If a majority of the electorate voting on the question in the territory approved for incorporation voting collectively approves the incorporation the commission's order shall become final on the date specified therein, the secretary shall send a certified copy of the order to the petitioner and the clerk of each county, city, village or township affected and to the secretary

of state. Charter commission elections and proceedings pursuant to Act No. 278 of the Public Acts of 1909, as amended, or Act No. 279 of the Public Acts of 1909, as amended, and except as provided in subsection (6) shall follow. Otherwise the incorporation shall not take effect and no further proceedings on the petition shall take place.

(6) If on submission of a second charter, a favorable vote by a majority of the electors residing in the area proposed for incorporation is not obtained, the incorporation proceedings shall be ended and the charter commission shall have no further authority to act or to submit another charter to the electors. If a charter has not been adopted within a period of 2 years following the date the commission's order becomes final, or if within the 2-year period the charter commission does not reconvene within 90 days after the election at which the first proposed charter was defeated, the incorporation proceedings are ended.

—MCLA 123.1010
Footnotes omitted

These functions are legislative in nature since the determination of boundaries of cities, townships and other units of government, assuming for the sake of argument there are no other constitutional provisions, is purely a legislative function.

The criteria of MCLA 123.1009, above, are so vague that their application is purely legislative, and not a nondiscretionary ministerial function.

See *Goethal* v *Kent County Supervisors*, 361 Mich 104 (1960) below in paragraph 3.

The essential powers of the three branches of government were clearly articulated by the Court in *In Re Manufacturer's Freight Forwarding Co,* 294 Mich 57, 292 NW 678 (1940):

> By the Constitution of this State (1908), art. 4, § 1:
>
> "*The powers of government are divided into three departments: The legislative, executive and judicial.*"
>
> The Constitution of 1908, art. 4, § 2, also provides:
>
> "*No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this Constitution.*"
>
> "*There is a distinction between legislative and judicial acts.* The legislature makes the law—courts apply it. To enact laws is an exercise of legislative power; to interpret them is an exercise of judicial power. To declare what the law shall be is legislative; to declare what it is or has been is judicial. *The legislative power prescribes rules of action. The judicial power determines whether, in a particular case, such rules of action have been transgressed. The legislature prescribes rules for the future. The judiciary ascertains existing rights.*" *In re Application of Consolidated Freight Co.,* 265 Mich. 340.
>
> As said in *Prentis* v. *Atlantic Coast Line Co.,* 211 U.S. 210 (29 Sup. Ct. 67):
>
> "A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power."

> "*Our government is one whose powers have been carefully apportioned between three distinct departments,* which emanate alike from the people, have their powers alike limited and defined by the Constitution, are of equal dignity, and within their respective spheres of action equally independent. *One makes the laws, another applies the laws in contested cases, while the third must see that the laws are executed.* This division is accepted as a necessity in all free governments, and the very apportionment of power to one department is understood to be a prohibition of its exercise by either of the others. The executive is forbidden to exercise judicial power by the same implication which forbids the courts to take upon themselves his duties." *People, ex rel. Sutherland,* v. *Governor,* 29 Mich. 320 (18 Am. Rep. 89).
>
> —294 Mich 57, 63-64
> Emphasis added.

2. The appointment by the Governor of three members to the Boundary Commission is unconstitutional.

> Sec. 2. The state boundary commission is created consisting of 3 members appointed by the governor with the advice and consent of the senate. The term of office of members shall be 3 years and until their successors are appointed and qualified. A member of the commission may be removed in the manner provided by law for removal of a public officer. A vacancy

shall be filled for the unexpired term in the same manner as the original appointment. Members appointed by the governor shall be known as state members and shall qualify by taking and filing the constitutional oath of office. The per diem compensation of the commission and the schedule for reimbursement of expenses shall be established annually by the legislature. The governor shall designate a state member as chairman of the commission.

—MCLA 123.1002

The doctrine of separation of powers prohibits the Governor from exercising the functions of the legislature. In *People* v *Dettenthaler*, 118 Mich 595, 77 NW 450 (1898), the Court affirmed this view:

. . . *The governor has no power to make laws.* The legislative power is in no part vested in him, being by section 1 of article 4 of the Constitution vested in the senate and house of representatives. It is not the design of the Constitution that he should legislate. His office is a check upon the legislature, and he may compel a reconsideration of a bill by seasonably returning it to the appropriate house with his objections to it, and, when the legislature has adjourned, his neglect to sign it prevents it from becoming a law; but he has not the slightest power in framing the law. Indeed, *it is a fundamental principle in American constitutions that the executive shall not make laws.*

—118 Mich 595, 602
Emphasis added.

The same principle is found in *Wood* v *State Administrative Board*, 255 Mich 220, 238 NW 16 (1931):

. . . By Constitution, art. 4, § 1, in harmony with American political theory, the State government is divided into the three historic departments, the legislative, executive, and judicial, and by section 2 it is declared that:

"No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this Constitution."

This historical and constitutional division of the powers of government forbids the extension, otherwise than by explicit language or necessary implication, of the powers of one department to another. The language of section 37 must be read with all intendments against enlargement beyond its plain words. And if it were ambiguous, *the doubt should be resolved in favor of the traditional separation of governmental powers* and the restricted nature of the veto.

—255 Mich 220, 224-225
Emphasis added.

3. The appointment by the probate judge of members to the Boundary Commission is unconstitutional because of invasion of the judicial into the legislative branch of government.

Sec. 5. The presiding probate judge, in each county shall appoint 2 persons residing in that county to serve on the commission during such time as the commission shall have under consideration municipal boundary adjustments for territory lying within his county, 1 of whom shall reside in a township and 1 within a city. If there is no city in a county at the time of the filing of a petition for a municipal boundary adjustment the pre-

siding probate judge shall appoint 2 county members from the county at large. Within 30 days after notice from the commission that a municipal boundary adjustment is pending in the county and the office of 1 or more of the county members is vacant, the presiding probate judge shall make original appointments and any appointment to fill a vacancy. A county member shall serve for 3 years and until his successor is appointed and qualified. Notwithstanding the appointment and qualification of a successor a county member shall continue to serve until the conclusion of all boundary adjustment matters which were filed during his term or the filing of which gave rise to his appointment. If a municipal boundary adjustment involves territory lying in more than 1 county, the county members of the county in which the greater part of the territory to be included within the adjusted boundaries lies shall serve on and be voting members of the commission. A county member shall receive per diem and expenses as authorized and paid by the county board of supervisors when serving on the commission on matters involving territory within his county. A county member shall qualify by taking and filing the constitutional oath of office.

—MCLA 123.1005

In *Goethal* v *Kent County Supervisors,* 361 Mich 104 (1960), the Court held:

> . . . The power to provide for the incorporation of municipalities rests in the legislature of the State, subject to constitutional provisions designed to afford the rights and privileges of home-rule government. In the statute, provisions of which are here involved, the legislature has exercised its authority, and as incident thereto has provided for the changes of the boundaries of municipalities through certain definite procedures. Problems pertaining thereto are essentially legislative in character. No attempt has been made to vest in the courts authority to interfere in such proceedings on the ground that the objectives sought to be effected are unreasonable. *In view of the recognized division of powers between the different departments of government any attempt to vest the courts with legislative authority would be invalid.*

In 2 McQuillin, Municipal Corporations (3d ed), § 7.10, it is said:

> "The extension of the boundaries of a city or town is viewed as purely a political matter, entirely within the power of the State legislature to regulate."

In accordance with the language quoted is the further statement in section 7.12 of the same work:

> "Finally it should be borne in mind that 'the same power cannot be either legislative or judicial, as the legislature may incline to retain it, or surrender it to the judiciary. If the boundaries of municipal corporations can be altered and changed by the legislature, in its discretion, and the authorities are all that way, then it is impossible that the courts can be invested with such power. Courts may determine what are the corporate limits already established; they may determine whether what is claimed by the municipal authority to be the corporate limits is so or not, and they may inquire whether the legislative authority has exceeded the powers with which it is invested; but all this implies an existing law, applicable to the particular subject, and the

inquiry is, what is the law, and has it been violated or complied with? Here, however, the inquiry is, what shall the law be, as respects the boundaries of this city; shall it be as designated by its charter, or shall it be as prayed by the petitioners?' Then a court has no authority to act as the matter is for the legislature. If a statute requires the court to determine whether or not certain territory should be annexed to a municipal corporation, it is invalid as conferring legislative power on the courts."

Of similar nature is the following statement in 69 ALR 266, 267, in an annotation discussing at some length the delegation of legislative authority:

"It may be stated as a general rule, supported by practically all of the cases in which the proposition is considered, that the creation, enlargement, or diminution of political districts or municipal corporations is a legislative function, and that a statute which delegates the performance of this function to the judiciary, and leaves to the discretion of that body the determination of the circumstances which will justify the creation of a district or corporation, or the circumstances which will justify an enlargement or diminution of such a political subdivision, violates the constitutional provision separating the powers of the government into legislative, executive, and judicial departments."

–361 Mich 104, 112-114
Emphasis added.

"By the judicial power of courts is generally understood the power to hear and determine controversies between adverse parties, and questions in litigation." *Daniels* v. *People* (1859), 6 Mich 381, 388.

"It is the inherent authority not only to decide, but to make binding orders or judgments, which constitutes judicial power." *Underwood* v. *McDuffee* (1867); 15 Mich 361, 368.

These propositions were affirmed in *Risser* v. *Hoyt* (1884), 53 Mich 185, 192, wherein there is the following discussion of judicial power:

"By article 6 of our Constitution the judicial power is vested in one Supreme Court, in circuit courts, in probate courts, and in justices of the peace. The legislature is also authorized to establish municipal courts in cities, and courts of conciliation. The courts referred to in this article are permanent organizations for the administration of justice; and it has been held that the term does not apply to those special tribunals which the law occasionally calls into existence for particular exigencies, and which cease to exist when the occasion ceases. In such cases judicial power to a limited extent is lodged in the hands of different officers for specified purposes, to be called into action as occasion may require. The exercise of this power by such tribunals is exceptional, and has been recognized and held valid only because they were under statutes in force before the Constitution was adopted, and which it was believed were not intended to be abrogated by it; or because the proceedings were preliminary and collateral to the principal proceedings, and where the officer does not render a final adjudication on the rights of the parties. *Rowe* v. *Rowe*, 28 Mich 356; *Shurbun* v. *Hooper*, 40 Mich 503; *Daniels* v. *People*, 6 Mich 381; *Edgarton* v. *Hinchman*, 7 Mich 352; *Streeter* v. *Paton*, 7 Mich 341. But the exercise of judicial power in its strict legal sense can be conferred only upon courts

named in the Constitution. The judicial power referred to is the authority to hear and decide controversies, and to make binding orders and judgments respecting them. *Daniels* v. *People*, 6 Mich 381; *Underwood* v. *McDuffee*, 15 Mich 361."

—*Buback* v *Governor*, 380 Mich 209, 219-220; 156 NW2d 549 (1968)

4. The constitutional right of referendum on legislation is denied by the State Boundary Commission.

Sec. 9. The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

—Const 1963, art 2, § 9

Thus, the referendum of legislation is the constitutional right of the people and legislation is stayed when signatures equal to 5% of those who voted for all gubernatorial candidates at the last gubernatorial election are on petitions. This right is denied because there is no referendum provi-

sion when the areas under one hundred population are annexed, and even for larger areas the referendum is not statewide as provided by the Constitution.

Sec. 9. (1) In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern. The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed. However, when a territory is proposed to be incorporated as a city only the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the state by the appropriate agency designated by the state administrative board which holds the record legal title to the entire area of the land in the territory adjacent to the city to be annexed, is filed with the governing body of the city and with the township board of the townshp in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the governing body of such city and the approval of the township board of such township.

Annexation petition or resolution, filing, hearing; commission powers

(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity

of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

Denial of annexation, procedure

(3) If an annexation is denied by the commission, the commission shall send a certified copy of its order to the clerk of each county, city, village and township affected.

Petition by 100 persons or less, approval of annexation, procedure, referendum

(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

—MCLA 117.9

5. The State Boundary Commission violates article 7, section 14 of the Michigan Constitution.

The Michigan Constitution of 1963, art 7, § 14, states as follows:

Sec. 14. The board of supervisors of each organized county may organize and consolidate townships under restrictions and limitations provided by law.

The Michigan Constitution guarantees the board of supervisors the right to organize and consolidate townships under restrictions and limitations provided by law. These restrictions and limitations are as folows:

Sec. 7. (1) Except as otherwise provided in this act, the incorporation of a village shall be initiated in the manner prescribed in and shall be subject to the provisions of Act No. 278 of the Public Acts of 1909, as amended, being sections 78.1 to 78.28 of the Compiled Laws of 1948, and for incorporation of a city as prescribed in and subject to the provisions of Act No. 279 of the Public Acts of 1909, as amended, being sections 117.1 to 117.38 of the Compiled Laws of 1948.

(2) Petitions proposing the incorporation of a city shall be signed by persons who are qualified electors and freeholders residing within the affected territory equal in number to not less than 5% of the population of the territory affected by the proposed new incorporation, or 100, whichever is greater.

(3) Petitions for incorporation shall be filed with the commission. The commission shall exercise the powers and carry out the duties of the board of supervisors, the village council or the secretary of state in relation to incorporations.

(4) No census of the territory affected by any incorporation or consolidation as provided in section 2 of Act No. 278 of the Public Acts of 1909, as amended,[1]

or by section 6 of Act No. 279 of the Public Acts of 1909, as amended,[2] shall be taken unless a proper petition therefor has been filed with the commission and the census is specifically ordered by the commission.

(5) While this act is in effect no other means of incorporation of a city or village shall be effective.

—MCLA 123.1007
Footnotes omitted

Sec. 12. (1) Proceedings for consolidation may be initiated by the filing of a petition with the commission signed by a number of registered electors who are residents of 1 or more of the affected municipalities at least equal to 5% of the total population of the affected municipalities:

Provided, however, That no new city may be created by the consolidation process unless at least 1 of the municipalities to be consolidated is an incorporated city.

(2) Any township having a common boundary that is contiguous with a city or village proposed for consolidation may be included in the consolidation if no village is incorporated within the territorial boundaries of the township or, if 1 or more villages are incorporated within the territorial boundaries of the township, then such village or villages shall be included within the consolidation. When any township is included in a consolidation, the term "municipality" as used in sections 12 to 17[1] shall include the township and the procedures set forth in such sections shall be altered as may be necessary to provide for the township.

(3) The petition shall name the municipalities proposed to be consolidated and shall request the commission to take the proceedings necessary for consolidation under this act. The commission shall reject a petition for consolidation if a proposition to consolidate the identical municipalities has been voted on within the 2 years immediately preceding the filing of the later petition. This shall not prevent the consolidation of 2 or more municipalities, which were included in a proposed consolidation voted on in the preceding 2 years, with or without additional territory, if the prior proposition included 1 or more municipalities which are not included in the later proposition.

(4) If the commission finds that a petition does not conform to the provisions of this act, Act No. 278 of the Public Acts of 1909, as amended,[2] or of Act No. 279 of the Public Acts of 1909, as amended,[3] to the extent that provisions thereof are not superseded by this act, or to the rules promulgated by the commission, the commission shall return the petition to the person from whom it was received together with a certified copy of its reasons for rejecting the petition. If the commission finds that the petition is proper it shall proceed in the manner specified for the processing of petitions which propose incorporation.

—MCLA 123.1012
Footnotes omitted

Sec. 12a. (1) After the public hearing on a proposed consolidation and review by the commission, the commission may deny the proposed consolidation, revise the boundaries of the territory to be consolidated and approve the proposal, or approve the consolidation without any change.

(2) If a consolidation proposal is denied by the commission its order is final immediately and the secretary

shall transmit a certified copy thereof to the petitioner and the clerk of each city, village or township affected.

(3) If a consolidation proposal is approved with or without a revision of the boundaries the commission's order becomes final 45 days after the date of the order unless within that 45 days a petition for a referendum is filed with the commission which contains the signatures of at least 5% of the registered electors residing in the area to be consolidated as approved by the commission. If a petition is not filed and the commission's order becomes final the secretary shall send a certified copy of the order to the petitioner and the clerk of each county, city, village or township affected and to the secretary of state. If the petition is filed, the commission after determining the validity of the petition shall submit the proposition to a vote of the electors of the affected municipalities and shall specify a date later than the referendum on which the commission's order becomes final.

(4) In order to be adopted, the proposition to consolidate shall receive an affirmative majority vote in each municipality affected voting separately. If a majority of the votes cast in each municipality affected are in favor of the proposed consolidation the commission's order becomes final and proceedings may be conducted in accordance with sections 13 to 17.[1] Otherwise the proceedings on the consolidation proposal shall terminate.

(5) The secretary shall notify the clerk of each municipality affected by the consolidation of the date for the election and the question to be submitted. Each clerk shall arrange for an election on the question of the

proposed consolidation and for the election of the charter commissioners to be elected from his municipality and he shall follow the procedure prescribed in the state election law except as otherwise provided in this act.

—MCLA 123.1012a

Sec. 13. If a proposed consolidation includes a portion of a township, the term "municipality" as defined in sections 1 and 12[1] when used in this section and sections 14, 15 and 17[2] means only that portion included within the proposed consolidated city. When its order approving a proposed consolidation becomes final, the commission shall call an election of 9 charter commissioners who shall be registered electors of the municipalities proposed for consolidation, each having a residence of at least 2 years in the municipality from which he is to be elected immediately prior to the election. The commission shall determine the number of charter commissioners to be selected from each municipality proposed for consolidation, which number shall be proportionate as near as may be to its population. Each municipality proposed for consolidation is entitled to a minimum of 1 charter commissioner, regardless of population. If charter commissioners are elected at the same election at which the proposition to consolidate is submitted, the election is void if the proposition to consolidate is not adopted. If charter commissioners are not elected at such election they shall be elected at a separate election to be held within 60 days after a favorable vote on the proposition to consolidate, which election date shall be set by the commission. No municipal officer or employee, elected or appointed, is eligible to a place on the charter commission.

—MCLA 123.1013

This constitutional right is made a nullity when the State Boundary Commission, upon petition of a legislative body of a city council can carve out sections of a township to be joined to a city contrary to the actions of the board of supervisors of the county involved.

6. The structure of the Boundary Commission violates article 1, sections 1 and 2 of the Michigan Constitution.

Article 1, section 1 reads as follows:

> Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.
>
> —Const 1963, art 1, § 1

Article 1, section 2, reads as follows:

> Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.
>
> —Const 1963, art 1, § 2

It is no accident this article and sections are placed FIRST in the Michigan Constitution to emphasize the primary of political power being inherent in the people, and government being instituted for the peoples' **equal** benefit, security and protection.

The fact that the Boundary Commission legislation (MCLA 123.1001 *et seq.*) permits its people in a city to gobble up part of a township, without the vote of the

citizens of the township, but denies the people of a township the right to gobble up part of a city without a vote by the citizens of the city, is both a denial of equal benefits of government for city and township residents and of township residents that cannot vote on annexation when only the legislative body of the city can propose annexation.

The denial of the ballot for township residents to vote on this issue affecting them, but permitting it for residents of a city, is a complete denial of this franchise for some—a grosser denial of equal protection than found in the malapportionment cases. See *Reynolds* v *Sims*, 377 US 533, 12 L Ed 2d 506, 84 S. Ct 1362 (1962).

III.

THE ACTIONS OF THE STATE BOUNDARY COMMISSION ARE UNCONSCIONABLE AS WELL AS UNCONSTITUTIONAL.

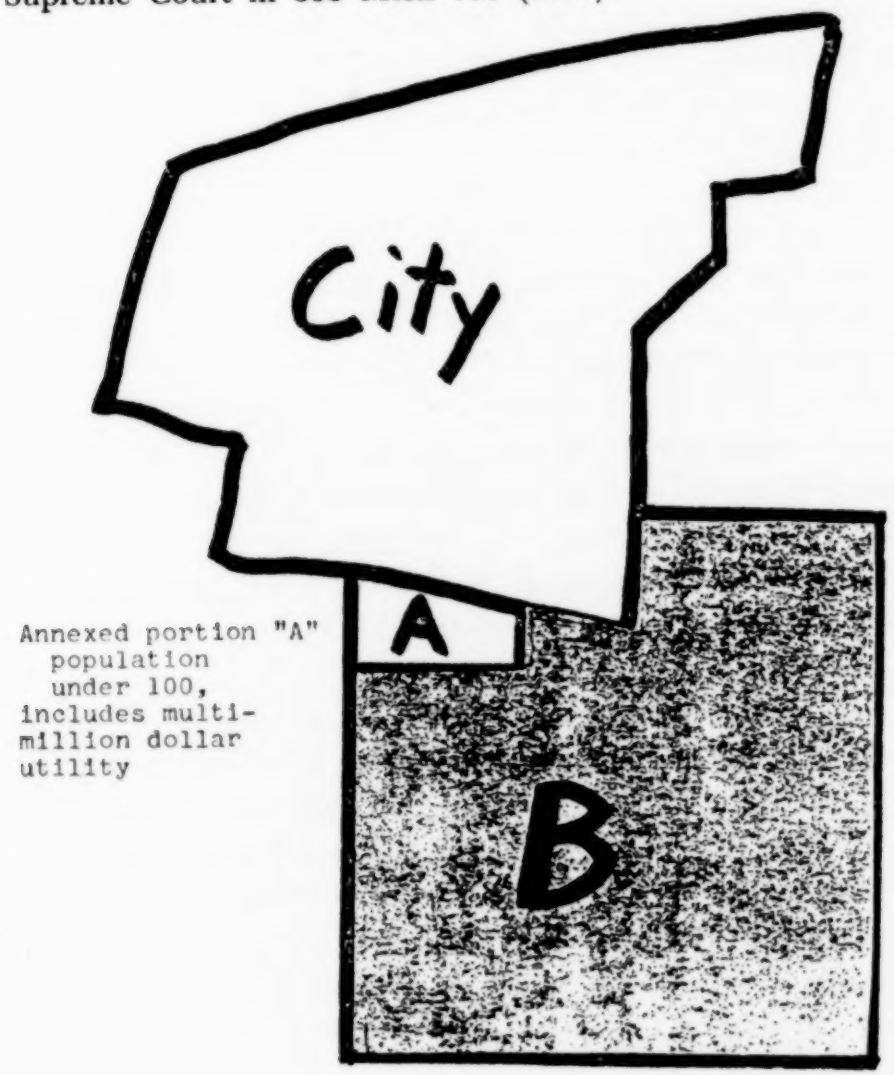
The Michigan Supreme Court, being a court of equity, looks at justice as well as technical arguments.

In *Hays* v *University of Michigan Regents*, 53 Mich App 605 (1974), the Court enunciated this position:

> "In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow • • •. Moreover, *in constitutional adjudication as elsewhere, equitable remedies are a special blend of what is necessary, what is fair, and what is workable.*
>
> • • •

> *"In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests, notwithstanding those interests have constitutional roots."* [Quoting *Lemon* v *Kurtzman*, 411 US 192; 93 S Ct 1463; 36 L Ed 2d 151 (1973).]
>
> —53 Mich App 605, 609-610
> Emphasis added.

This case was reversed on different grounds by the Supreme Court in 393 Mich 756 (1975).



The operation of the State Boundary Commission provides in the above chart that those in the shaded area "B" have absolutely no voice in whether or not the portion marked "A" is annexed from the township and given to the city. "A" might very well be a multi-million dollar utility, the tax on which provides much of the expenses for the township. By removing this tax base, the remaining people in the township will have to have substantial increases in their taxes or decreases in township services or both.

Those in the annexed area "A" cannot have a vote if the population is under 100 (MCLA 117.9(4)).

This is not just a hypothetical situation. In the matter of the City of Brighton annexing land from Brighton Township, the facts are that what was annexed was a shopping mall with no voting residents therein, but of approximately 80% of the excess tax value of the township involved.

Thus, the remaining people in the Brighton Township will have to either increase their taxes four-fold or reduce services, or both increase taxes and reduce services.

IV.

THE MICHIGAN STATE BOUNDARY COMMISSION VIOLATES THE UNITED STATES CONSTITUTION.

The United States Constitution reads in part:

> The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on applica-

tion of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

—US Const, art IV, § 4

The essence of the republican form of government is both the right to vote, and the right to have separation of powers among the judicial, executive and legislative branches of government.

1. The State Boundary Commission, by having the executive and judicial branches of government usurp the duties of the legislative branch is, per se, a violation of the republican form of government.

The Kansas Supreme Court stated in *Van Sickle* v *Shanahan*, 511 P2d 223; 212 Kan 436 (1973):

Thus, we come to the decisive question in the case—to the provisions of Article IV, Section 4 of the United States Constitution, heretofore quoted, require the conclusion that the doctrine of separation of powers is an inherent concept of a republican form of government, and is a guarantee to the people of the states that the powers inherently belonging to one department may not be vested by the people in another department of that government.

In a case involving representation in the Legislature (Harris v Shanahan, 192 Kan. 183, 387 P. 2d 771) this court considered elements of a republican form of government, i.e., whether the right of suffrage is a fundamental right of a republican form of government to be exercised in a free and unimpaired manner, and it concluded that the right is basic to a republican

form of government and the bedrock of our free political system. It was also concluded that the republican form of government is designated to function through representatives chosen by the people on regularly recurring election days and responsible to them, which is premised upon the fact the people cannot speak in mass, and the right to choose a representative is every citizen's portion of sovereign power. In the opinion it was said:

"When the founding fathers wrote the Constitution of the United States they enthusiastically established a republican form of government which became the cornerstone of American written constitutions. . . ."

• • •

An outstanding feature of the American constitutional system is the separation of the legislative, executive, and judicial powers of the government. The governments, both state and federal, are divided into three departments, each of which is given the powers and functions appropriate to it. Thus a dangerous concentration of power is avoided, and also the respective powers are assigned to the department best fitted to exercise them.

Generally speaking, the legislative power is the power to make, amend, or repeal laws; the executive power is the power to enforce the laws, and the judicial power is the power to interpret and apply the laws in actual controversies. As Chief Justice John Marshall said in Wayman v. Southard, 23 U.S. 1, 46, 6 L.Ed. 253, 263,

". . . The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law . . ."

Like the Constitution of Kansas, the United States Constitution contained no express provision requiring the separation of powers, such as is found in some state constitutions, but the separation is accomplished by the establishment of the three branches of government and the distribution of the various sovereign powers to each of them.

—*Van Sickle, supra,* 511 P2d 223, 235. Emphasis added.

In *Dearborn Twp* v *Twp Clerk,* 334 Mich 673 (1952), this Honorable Court stated:

It is apparent that section 70, *supra,* attempts to vest justices of the peace, officers possessing judicial power by virtue of article 7, § 1, with legislative and administrative power given to the township governing bodies thereof under article 8, § 17. On its face, therefore, section 70, *supra,* to the extent that it constitutes justices of the peace members of the township board is a violation of article 4, § 2, which provides that no person belonging to one department shall exercise the powers properly belonging to another.

In many decisions this Court has upheld and jealously guarded the right to keep distinctly separate one department from another. The doctrine of strict separation was early set forth by Mr. Justice COOLEY in *People, ex rel. Sutherland,* v. *Governor,* 29 Mich 320 (18 Am Rep 89). In holding that the apportionment of powers to one of the 3 co-ordinate branches is a prohibition

of its exercise by either of the other departments, he said:

"Our government is one whose powers have been carefully apportioned between 3 distinct departments, which emanate alike from the people, have their powers alike limited and defined by the Constitution, are of equal dignity, and within their respective spheres of action equally independent. One makes the laws, another applies the laws in contested cases, while the third must see that the laws are executed. This division is accepted as a necessity in all free governments, and the very apportionment of power to one department is understood to be a prohibition of its exercise by either of the others. The executive is forbidden to exercise judicial power by the same implication which forbids the courts to take upon themselves his duties."

In other decisions we have reaffirmed that doctrine and applied it to a variety of situations. We have struck down attempts by the legislature to give nonjudicial power to courts (*Houseman* v. *Kent Circuit Judge,* 58 Mich 364; *Nichols* v. *Judge of Superior Court of Grand Rapids,* 130 Mich 187; *Anway* v. *Grand Rapids Railway Co.,* 211 Mich 592 [12 ALR 26]). We forbade any attempt by the legislature to restrict judicial powers or qualifications (*People* v. *McMurchy,* 249 Mich 147; *Attorney General, ex rel. Cook,* v. *O'Neill,* 280 Mich 649). In *C. F. Smith Co.* v. *Fitzgerald,* 270 Mich 659, we reaffirmed the doctrine that the courts cannot legislate under the guise of the examination of the validity of a law. In *Wood* v. *State Administrative Board,* 255 Mich 220; and *Civil Service Commission* v. *Auditor General,* 302 Mich 673, we emphasized that the legislative and the executive could not en-

croach upon each other's powers. For other statements of the general rule see *Cooke* v. *Holland Furnace Co.*, 200 Mich 192 (LRA1918E, 552), and *Local 321, State, County & Municipal Workers of America* v. *City of Dearborn*, 311 Mich 674.

That the rule favoring strict separation of powers prevails throughout the United States need merely be mentioned in passing. From the time of the Federalist papers, the United States supreme court and other United States jurisdictions have reaffirmed that keeping the 3 great branches of government separate and distinct from each other is essential to the maintenance of a republican form of government.* This principle has become axiomatic.

–334 Mich 673, 682-683

2. The Boundary Commission Act denies both the republican form of government as guaranteed by US Const, art IV, § 4, and equal protection of laws as guaranteed by the 14th Amendment to the United States Constitution, to township voters.

A. The township legislative body cannot initiate annexation of part of a city equal to the right of a city legislative body to initiate annexation of part of a township [MCLA 117.9(7)(a)].

B. If the population of the area to be annexed is under 100, there is no right of referendum by the residents of the annexed area. [MCLA 117.9(4) and (5)].

C. Regardless of the population in the area to be annexed, there is no right to vote by those in the rest of the

township, even though they are vitally affected by the annexation [MCLA 117.9(5)].

These arguments are made under II-6 and III, above, and are incorporated by reference.

V.

THE RELIEF IN THIS MATTER SHOULD BE APPLICABLE TO THESE CASES AND PROSPECTIVE, NOT RETROACTIVE.

A court, as a practical matter, can make a ruling applicable to the cases before it prospectively, not retroactively. This is an excellent type of case for that matter and Townships, Plaintiffs-Appellees, are not asking for a retroactive application which would be confusing and could equitably be estopped on the basis of laches.

The Court held in *Lemon* v *Kurtzman*, 411 US 192; 93 S Ct 1463; 36 L Ed 2d 151 (1973):

> **[4]** The process of reconciling the constitutional interests reflected in a new rule of law with reliance interests founded upon the old is "among the most difficult of those which have engaged the attention of courts, state and federal. . . ." Chicot County Drainage Dist. v Baxter State Bank, 308 US 371, 374, 84 L Ed 329, 60 S Ct 317 (1940). *Consequently, our holdings in recent years have emphasized that the effect of a given constitutional ruling on prior conduct "is subject to no set 'principle of absolute retroactive*
>
> **[411 US 199]**
>
> *invalidity' but depends upon a consideration of 'par-*

ticular relations . . . and particular conduct . . . of rights claimed to have become vested, of status, of prior determinations deemed to have finality'; and 'of public policy in the light of the nature both of the statute and of its previous application.'" Linkletter, supra, at 627, 14 L Ed 2d 601, quoting from Chicot County Drainage Dist., supra, at 374, 84 L Ed 329. However appealing the logic of Norton may have been in the abstract, its abandonment reflected our recognition that statutory or even judge-made rules of law are hard facts on which people must rely in making decisions and in shaping their conduct. This fact of legal life underpins our modern decisions recognizing a doctrine of nonretroactivity. Appellants offer no persuasive reason for confining the modern approach to those constitutional cases involving criminal procedure or municipal bonds, and we ourselves perceive none.

—36 L Ed 2d 151, 160
Emphasis added.

[3] Claims that a particular holding of the Court should be applied retroactively have been pressed on us frequently in recent years. Most often, we have been called upon to decide whether a decision defining new constitutional rights of a defendant in a criminal case should be applied to convictions of others that predated the new constitutional development. E. g., Robinson v Neil, 409 US 505, 35 L Ed 2d 29, 93 S Ct 876 (1973); Adams v Illinois, 405 US 278, 31 L Ed 2d 202, 92 S Ct 916 (1972); Desist v United States, 394 US 244, 22 L Ed 2d 248, 89 S Ct 1030 (1969); Stovall v Denno, 388 US 293, 18 L Ed 2d 1199, 87 S Ct 1967 (1967); Johnson v New Jersey, 384 US 719, 16 L Ed 2d 882, 86 S Ct 1772 (1966); Tehan v Shott, 382 US 406, 15 L Ed 2d 453, 86

S Ct 459 (1966); Linkletter v Walker, 381 US 618, 14 L Ed 2d 601, 85 S Ct 1731 (1965). But "in the last few decades, we have recognized the doctrine of nonretroactivity outside the criminal area many times, in both constitutional and nonconstitutional cases." Chevron Oil Co. v Huson, 404 US 97, 106, 30 L Ed 2d 296, 92 S Ct 349 (1971); Hanover Shoe v United Shoe Machinery Corp. 392 US 481, 20 L Ed 2d 1231, 88 S Ct 2224 (1968); Simpson v Union Oil Co. 377 US 13, 12 L Ed 2d 98, 84 S Ct 1051 (1964); England v State Board of Medical Examiners, 375 US 411, 11 L Ed 2d 440, 84 S Ct 461 (1964). We have approved nonretroactive relief in civil litigation, relating, for example,

[411 US 198]

to the validity of municipal financing founded upon electoral procedures later declared unconstitutional, Cipriano v City of Houma, 395 US 701, 23 L Ed 2d 647, 89 S Ct 1897 (1969), and City of Phoenix v Kolodziejski, 399 US 204, 26 L Ed 2d 523, 90 S Ct 1990 (1970); or to the validity of elections for local officials held under possibly discriminatory voting laws, Allen v State Board of Elections, 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (1969). In each of these cases, the common request was that we should reach back to disturb or to attach legal consequence to patterns of conduct premised either on unlawful statutes or on a different understanding of the controlling judge-made law from the rule that ultimately prevailed.

—36 L Ed 2d 151, 159-160

This Court stated in *People* v *Fields*, 391 Mich 206 (1974):

There remains the question as to whether the decision of this Court should be given retroactive or prospective effect. Volumes have been written on this sub-

ject[2] We are concerned with the constitutionality of a statute in which the decision by a probate-juvenile judge, under the statute, can result in a person, classified as a juvenile, being waived from that classification and treated as an adult in a prosecution for a criminal offense. Some legal scholars adhere to the theory that once such a statute is declared to be unconstitutional, the court must also find that it was void and of no effect from the time of enactment. Others feel that the court finding can be given just prospective effect.

In *O'Callahan v Parker*, 395 US 258; 89 S Ct 1683; 23 L Ed 2d 291 (1969), the United States Supreme Court held that military courts lacked the authority to try a soldier who, while temporarily freed of military responsibility, had been charged with a crime cognizable in a civilian court. The issue of retroactivity of this deci-

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[2] *Gelpcke v City of Dubuque*, 68 US (1 Wall) 175; 17 L Ed 520 (1863); *Great Northern R Co* v *Sunburst Oil & Refining Co*, 287 US 358; 53 S Ct 145; 77 L Ed 360 (1932); *Chicot County Drainage Dist* v *Baxter State Bank*, 308 US 371; 60 S Ct 317; 84 L Ed 329 (1940); *Linkletter* v *Walker*, 381 US 618; 85 S Ct 1731; 14 L Ed 2d 601 (1965); *Tehan* v *Shott*, 382 US 406; 86 S Ct 459; 15 L Ed 2d 453 (1966); *Johnson* v *New Jersey*, 384 US 719; 86 S Ct 1772; 16 L Ed 2d 882 (1966); *Stovall* v *Denno*, 388 US 293; 87 S Ct 1967; 18 L Ed 2d 1199 (1967); *Desist* v *United States*, 394 US 244; 89 S Ct 1030; 22 L Ed 2d 248 (1969); *Cipriano* v *City of Houma*, 395 US 701; 89 S Ct 1897; 23 L Ed 2d 647 (1969); *Williams* v *United States*, 401 US 646; 91 S Ct 1148; 28 L Ed 2d 388 (1971); *Mackey* v *United States*, 401 US 667; 91 S Ct 1160; 28 L Ed 2d 404 (1971); *United States* v *United States Coin & Currency*, 401 US 715; 91 S Ct 1041; 28 L Ed 2d 434 (1971); *Chevron Oil Co* v *Huson*, 404 US 97; 92 S Ct 349; 30 L Ed 2d 296 (1971); *Phipps* v *School Dist of Pittsburgh*, 111 F2d 393 (CA 3, 1940); J A *Dougherty's Sons* v *Commissioner of Internal Revenue*, 121 F2d 700 (CA 3, 1941); *Warring* v *Colpoys*, 74 US App DC 303; 122 F2d 642 (1941); *McSparran* v *Weist*, 402 F2d 867 (CA 3, 1968); *Gosa* v *Mayden, Warden*, 450 F2d 753 (CA

sion came before the United States Court of Appeals, Fifth Circuit, in *Gosa* v *Mayden, Warden*, 450 F2d 753 (CA 5, 1971). Judge Clark, writing the majority opinion, said (p 758):

"It has always been the law that proceedings of a court which is without jurisdiction of the subject matter are void, but does this inevitably lead to the necessity for full retrospective application of the court decision which first discovers and announces the jurisdictional deficit? We hold it does not."

We hold that the retroactive effect of this decision is limited to those cases pending prior to October 3, 1972 (the date 1972 PA 265 was signed into law and given immediate effect) in which the issue of waiver was raised before the trial court and properly preserved on appeal.

5, 1971); *United States of America ex rel Flemings* v *Chafee*, 458 F2d 544 (CA 2, 1972); *Missouri Utilities Co* v *City of California*, 8 F Supp 454 (WD Mo, 1934).

Bingham v *Miller*, 17 Ohio 445 (1848); *Jawish* v *Morlet*, 86 A2d 96 (Mun Ct App DC, 1952); *Bricker* v *Sims*, 195 Tenn 361; 259 SW2d 661 (1953); *Haney* v *Lexington*, 386 SW2d 738 (Ky, 1964); *Bouge* v *Reed*, 254 Or 418; 459 P2d 869 (1969).

Law Review Articles:

Dunaway, *Limited Retroactivity of Overruling Decisions: A Doctrine of Justice*, 25 Va L Rev 210 (1938);

Spruill, *The Effect of an Overruling Decision*, 18 NC L Rev 199 (1940);

Levy, *Realist Jurisprudence and Prospective Overruling*, 109 U of Pa Law Rev 1 (1960);

Retroactivity of Criminal Procedure Decisions, 55 Iowa L Rev 1309 (1970).

Waivers otherwise granted prior to date of this decision and not contested upon proper preservation of the issue shall not be affected.

—*Fields, supra*, 221

VI.

A STUDY OF THE CASES CITED BY THIS HONORABLE COURT IN THIS CAUSE SHOWS THAT NONE OF THEM REFER TO THE SEPARATION OF POWERS AND REPUBLICAN FORM OF GOVERNMENT ISSUES RAISED IN THIS BRIEF.

The above statement is a negative finding. However, counsel has read the cases cited by this Court and finds that none of them deal with these questions.

VII.

IN THE ALTERNATIVE, TOWNSHIPS, PLAINTIFFS-APPELLEES, CAN SEEK RELIEF IN THE UNITED STATES SUPREME COURT OR THE UNITED STATES DISTRICT COURT OF MICHIGAN.

1. Relief in the United States Supreme Court.

Article III, § 1 of the United States Constitution states that "The judicial Power of the United States, shall be vested in one supreme Court. . . ."

Article III, § 2 provides for jurisdicion and specifically states that it shall include cases and controversies concerning disputes between states and citizens thereof.

The exact procedures for certiorari are articulated in 28 USC 1257:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

—28 USC 1257 in part.

See: Pope v *Atlantic CLR Co*, 345 US 379; 73 S Ct 740; 97 L Ed 1094 (1953); and *North Dakota State Board of Pharmacy* v *Snyder's Drug Stores, Inc*, 414 US 156; 94 S Ct 407; 38 L Ed 2d 379 (1973).

2. In the alternative, Townships, Plaintiffs-Appellees, can file new pleadings in a United States District Court in the State of Michigan having jurisdiction over one or more of the townships involved or the State Boundary Commission on questions not raised in pleadings prior to this before the Michigan State Supreme Court.

This issue of a republican form of government and separation of powers was not directly raised in the past pleadings before the Michigan Supreme Court, which did not rule on that question. Therefore, Townships, Plaintiffs-Appellees, have the option of going to the forum of a United States District Court with jurisdiction in the matter.

VIII.

IN THE ALTERNATIVE, IF THIS COURT DOES NOT GRANT A REHEARING AND THE RELIEF REQUESTED BY TOWNSHIPS, PLAINTIFFS-APPELLEES, A STAY ORDER SHOULD BE GRANTED GIVING TOWNSHIPS, PLAINTIFFS-APPELLEES, AN OPPORTUNITY AND TIME TO GO TO THE UNITED STATES DISTRICT COURT OR THE UNITED STATES SUPREME COURT.

If Plaintiffs-appellees attempted at this point of time to appeal to the United States Supreme Court or start a new action in the United States District Court, they would be premature and the federal courts would not take jurisdiction pending final action by this Honorable Court.

Since attorneys for Plaintiffs-appellees advised this Court they are prepared, if denied a rehearing, to seek relief in federal courts; this Court should grant a stay order of 20 days if it denies this application for rehearing, to give plaintiffs-appellees a reasonable time to seek relief in the United States Supreme Court or a United States District Court in Michigan.

If relief is sought in either the United States Supreme Court or the federal District Court within 20 days, an additional stay order should be granted pending the matter becoming *res judicata*.

CONCLUSION AND SUMMARY

The residents of a particular unit of government do *not* have a *substantive* constitutional right for the permanency of such boundaries in perpetuity for themselves and their children.

BUT THEY *DO* HAVE *PROCEDURAL* CONSTITUTIONAL RIGHTS THAT A PORTION OF A TOWNSHIP CANNOT BE GOBBLED UP AT THE INITIATIVE OF A CITY WITH THE APPROVAL OF AN UNCONSTITUTIONAL BOUNDARY COMMISSION AND TOWNSHIP VOTERS HAVE *NEITHER* AN EQUAL RIGHT TO GOBBLE UP PART OF A CITY *NOR* THE VOTE ON WHETHER THEY SHOULD BE INGESTED BY A CITY WITHOUT THE SAME POLITICAL VOICE AS VOTERS IN THE CITY DOING THE INGESTING.

RELIEF

WHEREFORE, this Honorable Court is asked to grant the following relief:

1. Grant the prayers of the Townships, plaintiffs-appellees, in the previous pleadings before this Court.

2. Based on the new questions of fact and law raised in these pleadings, grant the relief prayed for in the previous pleadings.

3. Declare the Michigan State Boundary Commission illegal and all their actions in relation to these causes and future matters null and void, but such application be prospective and not retroactive.

4. In the alternative, if this Court denies the application for a rehearing, grant a stay order of 20 days for the parties to file for relief either in the United States Supreme Court or a federal District Court in the State of Michigan; and if such pleadings are filed in either the United States Supreme Court or a federal District Court, grant a further stay order until the matter is *res judicata*.

Respectfully submitted,

DOWNS AND PIRICH

TOM DOWNS /s/

Tom Downs (P 12922)

JOHN D. PIRICH /s/

John D. Pirich (P 23204)

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(517) 372-2990

BAUCKHAM, REED, LANG,
SCHAEFER & TRAVIS

JOHN BAUCKHAM /s/

John Bauckham (P 10544)

ROBERT F. TRAVIS /s/

Robert F. Travis (P 21541)

500 Park Building
Kalamazoo, Michigan 49007
(616) 382-4500

Dated: November 14, 1977..

AFFIDAVIT

STATE OF MICHIGAN)
COUNTY OF INGHAM) ss.

ROBERT M. EDWARDS, being first duly sworn, deposes and says as follows:

1. He is director of legislative affairs of the Michigan Townships Association, whose business address is 3121 W. Saginaw, Lansing, Michigan.

2. He has read and is familiar with the decision of *Midland Township* v *State Boundary Commission, et al*, dated October 24, 1977.

3. As a result of this decision, he has information and belief that the following cities are filing for the annexation of portions of townships of populations of 100 or less; namely:

a. City of Coldwater

b. City of Monroe

c. City of Midland (a party to this litigation)

d. City of Novi (a party to this litigation)

e. City of Brighton (a party to this litigation)

4. He has information and belief that many other cities as a result of this opinion will be taking similar action of annexing units of townships of under 100 in population that have a substantial tax base.

5. He is of the further information and belief that such action will deprive townships immediately of needed tax revenue and cause them irreparable and permanent harm.

6. He has been advised by legal counsel that the opinion of October 24, 1977, is automatically stayed 20 days, during which time none of the aforementioned action that causes irreparable damage can legally take place.

7. Because of the emergency, a stay order or other legal action is needed to prevent any such action and to preserve the status quo pending further appeals and litigation in this matter.

8. He has been advised by legal counsel that a motion for a rehearing will be filed with this Honorable Court within 20 days of the decision of October 24, 1977, that new constitutional issues will be raised, including but not limited to the allegation that the Boundary Commission is itself unconstitutional, its membership being composed of three members appointed by the Governor, and for a county two members appointed by a probate judge, thereby being a violation of separation of powers having the executive and judicial branches interfere with the legislative branch of government.

9. He is further advised by counsel and is prepared on behalf of the interested parties to pursue an appeal to the United States Supreme Court based on the deprivation of the federal constitutional rights, including but not limited to the denial of the republican form of government.

10. He is further advised that the plaintiffs involved in the aforementioned matter are authorizing the attorney for the Michigan Townships Association, in this particular

case the firm of Downs and Pirich, to act on this matter with co-counsel, being the attorney record, representing the respective townships in this matter, and that such matter will be brought on within the 20 day period for a motion for a rehearing.

11. Further affiant sayeth not.

ROBERT M. EDWARDS /s/
Robert M. Edwards

Subscribed and sworn to before me
this 31st day of October, 1977.

BEVERLY A. LANG /s/
Beverly A. Lang
Notary Public
County of Ingham, Michigan

My commission expires: 2/3/81

EXHIBIT H

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the City of Lansing, on the 16th day of December in the year of our Lord one thousand nine hundred and seventy-seven.

Present the Honorable THOMAS GILES KAVANAGH, Chief Justice; G. MENNEN WILLIAMS, CHARLES L. LEVIN, MARY S. COLEMAN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., Associate Justices

Rehearing No. 437

TOWNSHIP OF NOVI,

Plaintiff-Appellee,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

Intervening Plaintiffs-Appellees, 58236

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Defendant,

and

CITY OF NOVI, a Municipal corporation,

Intervening Defendant-Appellant,

and

GREGORY I. DONOVAN, et al,

Intervening Defendants.

In this cause an application for rehearing and a motion for stay order are considered and they are hereby DENIED.

STATE OF MICHIGAN — ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whold of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 16th day of December in the year of our Lord one thousand nine hundred and seventy-seven.

Corbin R. Davis, Deputy Clerk.

EXHIBIT 7

EXHIBIT I

Sec. 9. (1) In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern. The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed. However, when a territory is proposed to be incorporated as a city only the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the state by the appropriate agency designated by the state administrative board which holds the record legal title to the entire area of the land in the territory adjacent to the city to be annexed, is filed with the governing body of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the governing body of such city and the approval of the township board of such township.

(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

(3) If an annexation is denied by the commission, the

commission shall send a certified copy of its order to the clerk of each county, city, village and township affected.

(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

(5) If an annexation is approved, and if on the date the petition or resolution was filed more than 100 persons resided in the area approved for annexation, the commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The commission's order shall become final 30 days after the date of the order unless within that 30 days a petition is filed with the commission which contains the signatures of at least 25% of the registered electors residing in the portion of the territory approved for annexation, in the annexing city or in the balance of the township. The commission after verifying the validity of any referendum petition shall order that a referendum on the question of annexation be held in each area from which a valid petition was filed. If a valid petition is not filed within the 30 days or if the majority of the electorate voting on the question in each area in which a referendum was held, voting separately, approve the annexation, the annexation shall be effective on a date set by order of the commission, otherwise the annexation shall not take effect.

(6) The commission shall reject a petition or resolution for annexation of territory which includes all or any part of the territory which was described in any petition or resolution for annexation filed within the preceding 2 years and

which was denied by the commission or was defeated in an election pursuant to subsection (5).

(7) In addition to the methods for initiating annexation as provided in this act, a petition or resolution as follows may be submitted to the state boundary commission in a form and manner prescribed by it:

(a) By resolution of the legislative body of the city to which the area is proposed to be annexed.

(b) By petition by the persons, firms, corporations, the United States government or the state or any of its subdivisions who collectively hold record title to 75% or more of the area of the land exclusive of streets in the territory proposed for annexation at the time of filing the petition.

(c) By petition by 20% of the registered electors who reside in the area proposed for annexation.

(8) Where the territory proposed to be annexed to any city is adjacent to the city and consists of a park or vacant property located in a township and owned by the city annexing the same, and there is no one residing thereon, such territory may be annexed to the city solely by resolution of the city council of the city or in any case where the territory proposed to be annexed is adjacent to the city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city, village, or township, such annexation may also be accomplished by the affirmative majority vote of the legislative body of such city and the approval of the legislative body of such adjoining city, village or township. As an alternate method, where there are no qualified electors residing in the territory proposed to be annexed to the city, other than the person or persons petitioning, a petition signed by a person or persons, firms, corporation, the

United States government, or the state or any of its subdivisions who collectively hold the record legal title to more than ½ of the area of the land in the territory to be annexed is filed with the city council of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the city council of such city and the approval of the township board of such township. At least 10 days prior to the approval by the township board, the township treasurer shall notify, personally or by registered mail with return receipt demanded, the owners of all real property in the territory to be annexed as shown on the assessment rolls of the township at the last known address on file with the township treasurer. This section shall not be construed so as to give any city the authority to proceed hereunder to attach territory from any other city unless the question relative thereto has been voted upon by the voters of the entire cities affected, except as hereinbefore specifically provided, where the territory proposed to be annexed is adjacent to a city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city.

(9) The provisions of section 14 shall not be applicable to an annexation approved by the commission of part of a township or village to a city except in the event of outstanding bonds or other evidences of indebtedness of the township or village. In such event, the commission shall determine and order an equitable division of assets and liabilities which relate to the bonds or other indebtedness.

(10) The provisions of sections 8 and 8a shall not be applicable to petitions or resolutions filed with the state boundary commission.

(11) On and after the effective date of the 1970 amendments to this section, and so long as Act No. 191 of the Public

Acts of 1968 is in effect, annexation of territory from a township or village to a home rule city shall be as provided in this section and no other means of annexation shall be effective. Amended by P.A. 1970, No. 219, § 1, Eff. April 1, 1971.

EXHIBIT J

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

I, DENNIS GILLILAND, being first duly sworn, hereby state that:

1. I am a Professor of Statistics at Michigan State University and that I hold a Ph.D. in Statistics from Michigan State University, obtained in 1966.

2. At the request of the law firm of Downs and Pirich, I undertook a study of populations, areas and state equalized valuations by township and city in Michigan. The study included data directly related to annexation proposals filed with the Michigan State Boundary Commission between 1971 and the present.

3. The results of this study are summarized in tables and stated in the brief.

Dennis Gilliland /s/
DENNIS GILLILAND

Subscribed and sworn to before me
this 6th day of March, 1978.
Denice K. Purves /s/
DENICE K. PURVIS, Notary Public
Ingham County, Michigan
My commission expires: 2/9/80

EXHIBIT K

1978 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Spring Lake	Ferrysburg	100-or-less	4,406	1,117	8,013	2,196
2.	Flint	Flint	100-or-less	19,149	82,727	29,927	193,317
3.	Flint	Flint	100-or-less	"	"	"	"
4.	"	"	100-or-less	"	"	"	"
5.	Mt. Morris	Flint	100-or-less	13,265	82,727	29,349	193,317
6.	"	"	100-or-less	"	"	"	"
7.	Flint	Flint	100-or-less	19,149	82,727	29,927	193,317
8.	"	"	100-or-less	"	"	"	"
9.	Mundy	Flint	100-or-less	4,816	82,727	8,029	193,317
10.	"	"	100-or-less	"	"	"	"
11.	Flint	Flint	100-or-less	19,149	82,727	29,927	193,317
12.	"	"	100-or-less	"	"	"	"
13.	"	"	100-or-less	"	"	"	"
14.	"	"	100-or-less	"	"	"	"
15.	"	"	100-or-less	"	"	"	"
16.	"	"	100-or-less	"	"	"	"
17.	"	"	100-or-less	"	"	"	"
18.	"	"	100-or-less	"	"	"	"
19.	"	"	100-or-less	"	"	"	"
20.	Mt. Morris	Flint	100-or-less	13,625	82,727	29,349	193,317
21.	Mundy	Flint	100-or-less	4,816	82,727	8,029	193,317
22.	"	"	100-or-less	"	"	"	"
23.	"	"	100-or-less	"	"	"	"

ON FEBRUARY 17, 1978, AN ADDITIONAL ELEVEN ANNEXATION RESOLUTIONS WERE FILED WITH THE STATE BOUNDARY COMMISSION.

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977)

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1977 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Sheridan	Fremont	100-or-less	1,117	2,139	2,477	3,465
2.	Spring Lake	Ferrysburg	100-or-less	4,406	1,117	8,013	2,196
3.	Wheatfield	Williamston	100-or-less	665	1,547	1,177	2,600
4.	Monroe	Monroe	N/A	3,954	11,951	9,351	23,894
5.	"	"	N/A	"	"	"	"
6.	Frenchtown	Monroe	N/A	6,335	11,951	14,685	23,894
7.	"	"	N/A	"	"	"	"
8.	"	"	N/A	"	"	"	"
9.	Monroe	Monroe	N/A	3,954	11,951	9,351	23,894
10.	Frenchtown	Monroe	N/A	6,335	11,951	14,685	23,894
11.	"	"	N/A	"	"	"	"
12.	Monroe/Frenchtown	Monroe	N/A	4/6,335	11,951	9,351/14,685	23,894
13.	Imlay	Imlay City	100-or-less	843	1,144	4,150	1,980
14.	"	"	100-or-less	"	"	"	"
15.	"	"	100-or-less	"	"	"	"
16.	"	"	100-or-less	"	"	"	"
17.	"	"	100-or-less	"	"	"	"
18.	"	"	100-or-less	"	"	"	"
19.	Lapeer	Lapeer	100-or-less	1,436	2,967	2,574	6,314
20.	Shelby	Utica	100-or-less	16,077	2,431	29,467	3,504
21.	"	"	100-or-less	"	"	"	"
22.	Monroe/Frenchtown	Monroe	N/A	4/6,335	11,951	9,351/14,685	23,894

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977)

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1976 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2] Twp.	Voter Registration[2] City	Population[3] Twp.	Population[3] City
# 1.	Scio	Ann Arbor	N/A	3,888	70,675	7,230	100,035
2.	Ann Arbor	Ann Arbor	100-or-less	1,930	70,675	3,589	100,035
3.	Crystal Falls	Crystal Falls	100-or-less	1,034	1,385	1,499	2,000
4.	Cotterllville	Marine City	N/A	1,034	2,299	2,194	4,567
5.	"	"	100-or-less	"	"	"	"
6.	Otisco	Belding	100-or-less	725	2,836	1,479	5,121
7.	Lansing	E. Lansing	100-or-less	5,597	31,888	11,127	47,540
8.	Pittsfie'd	Saline	100-or-less	4,687	2,767	8,185	4,811
9.	Lexington	Croswell	100-or-less	1,280	946	2,494	1,954
10.	Dayton	Fremont	100-or-less	965	2,139	1,910	3,465
11.	Dayton/Sheridan	Fremont	100-or-less	965/1,117	2,139	1,910/2,477	3,465
12.	"	"	100-or-less	"	"	"	"
13.	Sheridan	Fremont	100-or-less	1,117	2,139	2,477	3,465
14.	"	"	100-or-less	"	"	"	"
15.	"	"	N/A	"	"	"	"
16.	"	"	100-or-less	"	"	"	"
17.	"	"	100-or-less	"	"	"	"
18.	"	"	100-or-less	"	"	"	"
19.	"	"	100-or-less	"	"	"	"
20.	Dayton/Sheridan	Fremont	100-or-less	965/1,117	2,139	1,910/2,477	3,465
21.	Sheridan	Fremont	100-or-less	1,117	2,139	2,477	3,465
22.	"	"	100-or-less	"	"	"	"
# 23.	Dayton	Fremont	100-or-less	965	2,139	1,910	3,465
24.	"	"	100-or-less	"	"	"	"
25.	"	"	100-or-less	"	"	"	"

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1975 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2] Twp.	Voter Registration[2] City	Population[3] Twp.	Population[3] City
# 1.	Garfield	Traverse City	more-than-100[4]	2,901	8,926	4,917	18,048
2.	Lake	Bridgman	100-or-less	924	804	2,146	1,621
3.	Fenton	Fenton	100-or-less	5,933	4,463	8,850	8,284
4.	Madison	Adrian	more-than-100	2,018	9,188	5,494	20,382
5.	Fenton	Fenton	100-or-less	5,933	4,463	8,850	8,284
6.	Lapeer	Lapeer	N/A	1,436	2,967	2,574	6,314
7.	South Haven	South Haven	100-or-less	1,753	3,238	3,416	6,471
8.	Lexington	Croswell	100-or-less	1,280	946	2,494	1,954
9.	Mt. Morris	Mt. Morris	100-or-less	13,265	1,467	29,349	3,778
10.	"	"	100-or-less	"	"	"	"

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

[4] The Annexation Proposal was approved with boundary adjustments changing the population of the township area proposed for annexation from 100-or-less to above 100. The February 14, 1978 election resulted in the defeat of the annexation proposal.

1974 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Brighton	Brighton	N/A	3,440	1,652	5,822	2,457
2.	Sands	Marquette	N/A	358	12,835	2,164	21,967
3.	Vienna	Clio	100-or-less	4,648	1,115	9,359	2,357
4.	Sands	Marquette	N/A	358	12,835	2,164	21,967
5.	Avon	Rochester	100-or-less	15,065	4,566	24,513	7,054
6.	Plymouth	Plymouth	N/A	9,533	6,296	17,497	11,758
7.	"	"	100-or-less	"	"	"	"
8.	"	"	N/A	"	"	"	"
9.	Sheridan	Albion	100-or-less	5,318	874	2,469	12,112
10.	Lapeer	Lapeer	N/A	1,436	2,967	2,574	6,314
11.	Plymouth	Plymouth	N/A	9,533	6,296	17,497	11,758
12.	Avon	Troy	N/A	15,065	25,009	24,513	39,419
13.	Mt. Morris	Mt. Morris	100-or-less	13,265	1,467	29,349	3,778

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1973 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Coldwater	Coldwater	100-or-less	1,732	4,990	5,841	9,232
2.	Pere Marquette	Ludington	100-or-less	987	5,451	1,846	9,232
3.	"	"	100-or-less	"	"	"	"
4.	Quincy/Franklin	Hancock	100-or-less	172/719	2,274	306/1,180	4,820
5.	Union	Mt. Pleasant	N/A	2,638	11,168	4,631	20,524
6.	Brietung	Iron Mt.	N/A	2,460	6,020	3,392	8,702
7.	"	"	N/A	"	"	"	"
8.	"	"	N/A	"	"	"	"
9.	"	"	100-or-less	"	"	"	"
10.	Portage	Houghton	100-or-less	1,552	2,473	8,646	6,067
11.	Wheatfield	Williamston	N/A	665	1,547	1,177	2,600
12.	Port Huron	Port Huron	N/A	3,475	15,541	7,635	35,794
13.	Brietung	Iron Mt.	more-than-100	2,460	6,020	3,392	8,702
14.	"	"	100-or-less	"	"	"	"
15.	Brietung	Kingsford	100-or-less	2,460	2,679	3,392	5,276
16.	Brietung	Iron Mt.	100-or-less	2,460	6,020	3,392	8,702
17.	Pokagon/Silver Creek	Dowagiac	100-or-less	939/1,569	2,667	2,189/2,886	6,583
18.	Browntown	Gibralter	100-or-less	5,484	1,938	7,012	3,842
19.	Alpena	Alpena	more-than-100	4,018	6,584	9,001	13,805
20.	Imlay	Imlay City	100-or-less	843	1,144	4,150	1,980
21.	"	"	100-or-less	"	"	"	"
22.	"	"	N/A	"	"	"	"
23.	"	"	N/A	"	"	"	"

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1972 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Arcada	Alma	more-than-100	806	4,338	1,665	9,611
2.	Pittsfield	Ann Arbor	100-or-less	4,687	70,675	8,185	100,035
3.	Hartford	Hartford	100-or-less	1,069	1,143	2,211	2,508
4.	Clayton	Swartz Creek	N/A	3,127	2,495	5,305	4,925
5.	Commerce	Walled Lake	N/A	10,619	1,738	18,857	3,759
6.	South Haven	South Haven	100-or-less	1,753	3,238	3,416	6,471
7.	St. Joseph	St. Joseph	N/A	6,083	6,235	10,271	11,042
8.	Brighton	Brighton	100-or-less	3,440	1,652	5,882	2,457
9.	Sturgis	Sturgis	100-or-less	699	4,486	1,449	9,295
10.	Delhi	Lansing	100-or-less	8,468	75,403	13,795	131,403
11.	Munising	Munising	100-or-less	795	2,197	1,614	3,677
12.	Scio	Ann Arbor	N/A	3,888	70,675	7,230	100,035
13.	Portsmouth	Bay City	100-or-less	2,196	26,509	4,088	49,499
14.	Buchanan	Buchanan	100-or-less	1,509	2,670	3,182	4,645
15.	Pere Marquette	Ludington	N/A	987	5,451	1,846	9,021
16.	"	"	N/A	"	"	"	"
17.	"	"	N/A	"	"	"	"
18.	"	"	N/A	"	"	"	"
19.	St. Joseph	St. Joseph	100-or-less	6,083	6,235	10,271	11,042
20.	Buchanan	Buchanan	100-or-less	1,509	2,670	3,182	4,645
21.	Portsmouth	Bay City	N/A	2,196	26,509	4,088	49,449
22.	Pere Marquette	Ludington	100-or-less	987	5,451	1,846	9,021
23.	"	"	100-or-less	"	"	"	"
24.	Shelby	Utica	more-than-100	16,077	2,431	29,467	3,504
25.	Grant	Clare	N/A	939	1,577	1,754	2,639
26.	Portsmouth	Bay City	100-or-less	2,196	26,509	4,088	49,449
27.	Scio	Ann Arbor	100-or-less	3,888	70,675	7,230	100,035

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

Exhibit L

EXHIBIT L

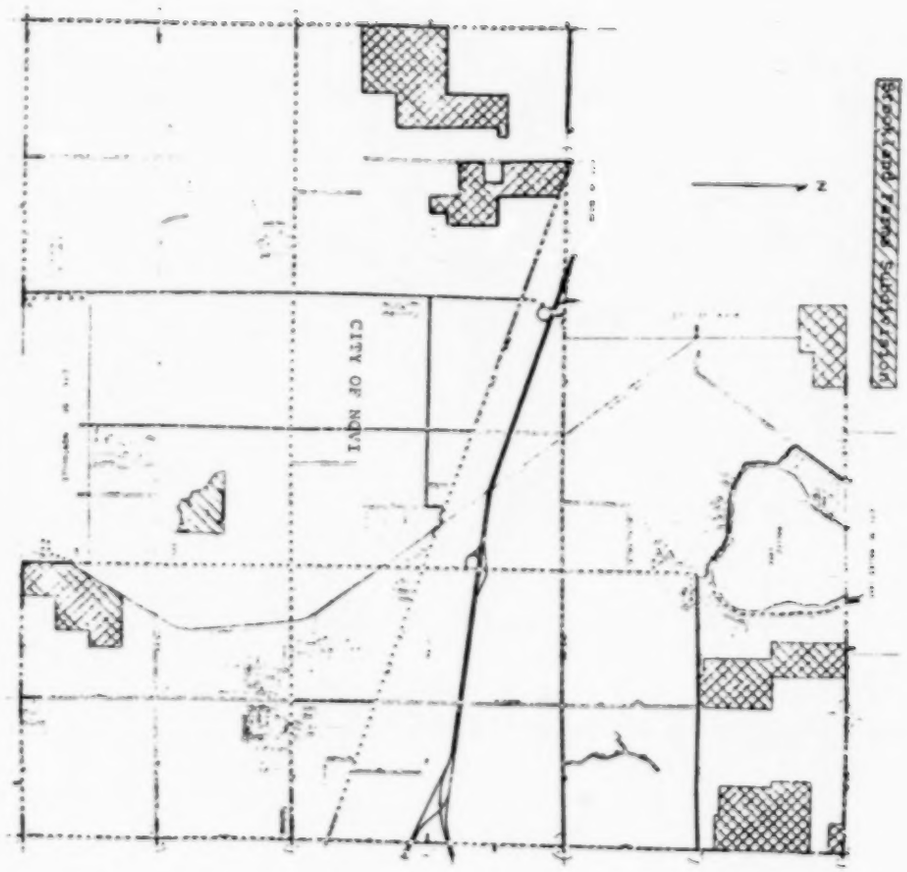
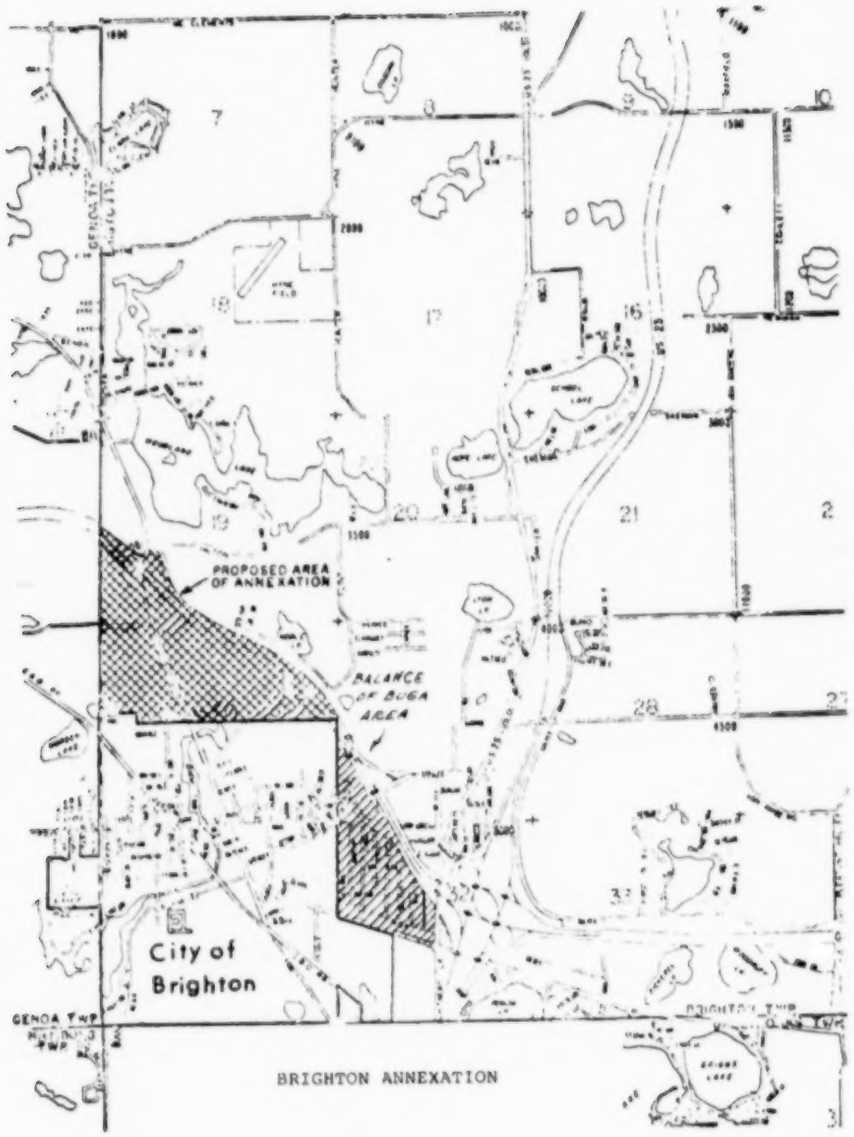
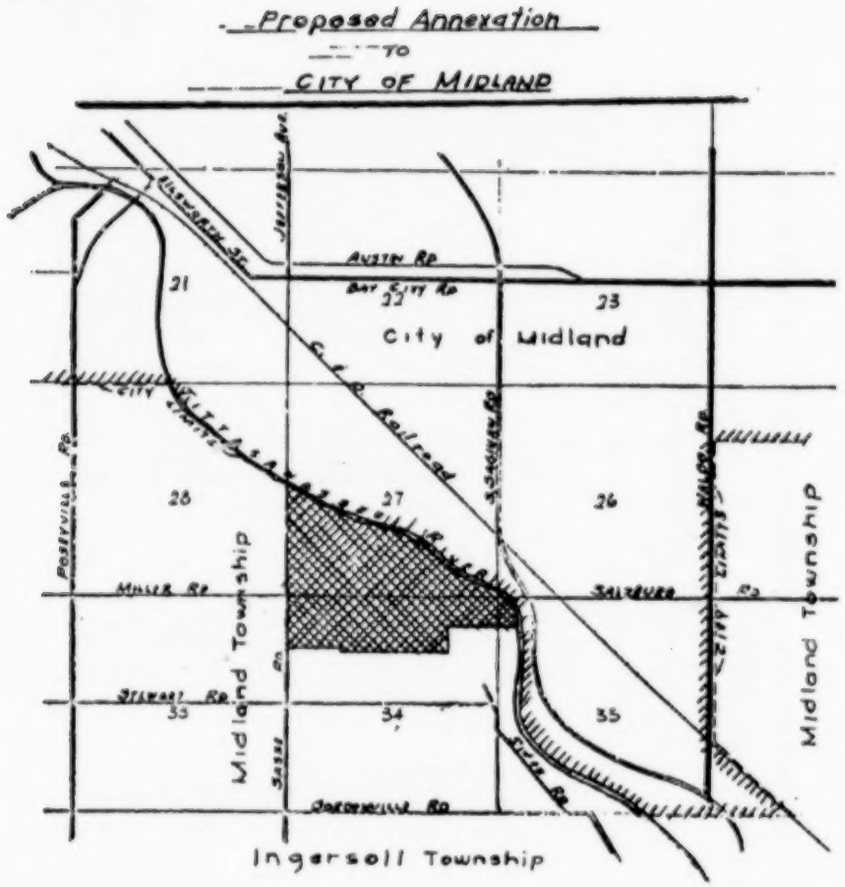


EXHIBIT M



BRIGHTON ANNEXATION

EXHIBIT N



Commencing on the West line of Section 27, T14N, R2E, at the center line of the Tittabawassee River; thence South along the West line of Sections 27 and 34 to a point 100 feet North of the North One-Eighth (⅛) line of Section 34; thence East parallel to the said North One-Eighth (⅛) line to the West One-Eighth (⅛) line of Section 34; thence South along the said West One-Eighth (⅛) line 100 feet to the North One-Eighth (⅛) line of Section 34; thence East along the said North One-Eighth (⅛) line to the East One-Eighth (⅛) line of section 34; thence North along the said East One-Eighth (⅛) line to the intersection with the North line of the South One-Half (½) of the Northeast One-Quarter (¼) of the Northeast One-Quarter (¼) of Section 34; thence East along the said North line of the South One-Half (½) of the Northeast One-Quarter (¼) of the Northeast One-Quarter (¼) of Section 34 and continuing East along the North line of the South One-Half (½) of the Northwest One-Quarter (¼) of the Northwest One-Quarter (¼) of the Northwest One-Quarter (¼) of Section 35 to the center line of the Tittabawassee River; thence Northwesterly along the center line of the Tittabawassee River to the place of beginning.

EXHIBIT O

TOWNSHIPS

Table 20. Selected Items of Township Government Finances for Population-Size Groups in Michigan 1971-72

Item	Total	Townships with a 1970 population of--				
		25,000 or more	10,000 to 24,999	5,000 to 9,999	2,500 to 4,999	Less than 2,500
MICHIGAN						
NUMBER OF TOWNSHIP GOVERNMENTS	1 248	13	39	76	170	950
POPULATION, 1970	3 235 529	508 482	611 309	533 706	566 071	1 015 961
	AMOUNT (THOUSANDS OF DOLLARS)					
GENERAL REVENUE	156 602	40 136	33 338	21 601	15 097	46 429
INTERGOVERNMENTAL REVENUE	48 225	8 743	10 670	7 604	7 535	13 673
GENERAL REVENUE FROM OWN SOURCES	108 377	31 393	22 668	13 998	7 562	32 756
TAXES	68 486	15 534	10 659	7 145	6 024	29 125
PROPERTY ONLY	64 535	14 263	10 074	6 457	5 649	28 091
CHARGES AND MISCELLANEOUS	39 891	15 860	12 009	6 852	1 538	3 632
GENERAL EXPENDITURE, ALL FUNCTIONS	119 778	34 330	27 302	16 476	12 360	29 311
OTHER THAN CAPITAL OUTLAY	105 655	29 732	24 257	14 279	11 022	26 366
EDUCATION	42	3	25	9	5	-
HIGHWAYS	19 558	3 294	3 497	1 978	2 967	7 823
PUBLIC WELFARE	36	11	9	4	2	11
POLICE PROTECTION	10 925	6 148	2 317	1 144	542	774
FIRE PROTECTION	12 232	4 556	3 820	1 639	1 667	550
SEWERAGE	6 007	2 362	1 162	1 883	340	260
SANITATION OTHER THAN SEWERAGE	2 391	1 211	400	365	339	75
PARKS AND RECREATION	2 159	1 135	544	249	178	53
FINANCIAL ADMINISTRATION	10 386	1 763	1 552	1 218	1 236	4 616
GENERAL CONTROL	15 198	3 726	2 833	2 242	2 044	4 353
GENERAL PUBLIC BUILDINGS	3 887	1 469	1 187	616	488	127
INTEREST ON GENERAL DEBT	4 885	2 276	722	1 061	282	545
OTHER AND UNALLOCABLE	32 071	6 375	9 233	4 068	2 271	10 124
UTILITY REVENUE	14 775	7 573	3 884	2 284	481	552
UTILITY EXPENDITURE	18 105	8 452	5 601	2 806	534	711
DEBT OUTSTANDING AT END OF YEAR	186 593	65 096	39 691	53 134	11 732	16 940

Item	Total	Townships with a 1970 population of--				
		25,000 or more	10,000 to 24,999	5,000 to 9,999	2,500 to 4,999	Less than 2,500
	PERCENT DISTRIBUTION					
NUMBER OF TOWNSHIP GOVERNMENTS	100.0	1.0	3.1	6.1	13.6	76.1
POPULATION, 1970	100.0	15.7	18.9	16.5	17.5	31.4
GENERAL REVENUE	100.0	25.6	21.3	13.8	9.6	29.6
INTERGOVERNMENTAL REVENUE	100.0	18.1	22.1	15.8	15.6	28.4
GENERAL REVENUE FROM OWN SOURCES	100.0	29.0	20.9	12.9	7.0	30.2
TAXES	100.0	22.7	15.6	10.4	8.8	42.5
PROPERTY ONLY	100.0	22.1	15.6	10.0	8.8	43.5
CHARGES AND MISCELLANEOUS	100.0	39.8	30.1	17.2	3.9	9.1
GENERAL EXPENDITURE, ALL FUNCTIONS	100.0	28.7	22.8	13.8	10.3	24.5
OTHER THAN CAPITAL OUTLAY	100.0	28.1	23.0	13.5	10.4	25.0
EDUCATION	100.0	7.8	60.2	21.1	10.9	-
HIGHWAYS	100.0	16.8	17.9	10.1	15.2	40.0
PUBLIC WELFARE	100.0	29.7	24.3	11.9	4.7	29.4
POLICE PROTECTION	100.0	56.3	21.2	10.5	5.0	7.1
FIRE PROTECTION	100.0	37.2	31.2	13.4	13.6	4.5
SEWERAGE	100.0	39.3	19.3	31.4	5.7	4.3
SANITATION OTHER THAN SEWERAGE	100.0	50.7	16.7	15.3	14.2	3.1
PARKS AND RECREATION	100.0	52.6	25.2	11.5	8.2	2.5
FINANCIAL ADMINISTRATION	100.0	17.0	14.9	11.7	11.9	44.4
GENERAL CONTROL	100.0	24.5	18.6	14.8	13.4	28.6
GENERAL PUBLIC BUILDINGS	100.0	37.8	30.5	15.8	12.6	3.3
INTEREST ON GENERAL DEBT	100.0	46.6	14.8	21.7	5.8	11.1
OTHER AND UNALLOCABLE	100.0	19.9	28.8	12.7	7.1	31.6
UTILITY REVENUE	100.0	51.3	26.3	15.5	3.3	3.7
UTILITY EXPENDITURE	100.0	46.7	30.9	15.5	3.0	3.9
DEBT OUTSTANDING AT END OF YEAR	100.0	34.9	21.3	28.5	6.3	9.1

Item	Total	Townships with a 1970 population of---				
		25,000 or more	10,000 to 24,999	5,000 to 9,999	3,500 to 4,999	Less than 3,500
		PER CAPITA AMOUNTS				
GENERAL REVENUE	48.40	78.93	59.54	40.48	26.67	45.70
INTERGOVERNMENTAL REVENUE	14.90	17.20	17.46	14.25	13.31	13.46
GENERAL REVENUE FROM OWN SOURCES	33.50	61.74	37.08	26.23	13.36	32.24
TAXES	21.17	30.55	17.44	13.30	10.64	28.67
PROPERTY ONLY	19.95	28.05	16.98	12.10	9.98	27.65
CHARGES AND MISCELLANEOUS	12.33	31.19	19.65	12.86	2.72	3.58
GENERAL EXPENDITURE, ALL FUNCTIONS	37.02	67.52	44.66	30.67	21.86	28.85
OTHER THAN CAPITAL OUTLAY	32.65	58.47	38.68	26.76	19.67	25.85
EDUCATION	0.01	0.01	0.01	0.02	0.01	(Z)
HIGHWAYS	4.05	8.48	5.72	3.71	3.24	7.70
PUBLIC WELFARE	0.01	0.02	0.02	0.01	(Z)	0.01
POLICE PROTECTION	3.38	12.09	3.79	2.14	0.88	0.76
FIRE PROTECTION	3.76	8.06	6.25	3.07	2.95	0.54
SEWERAGE	1.86	4.65	1.60	3.53	0.80	0.28
SANITATION OTHER THAN SEWERAGE	0.74	2.38	0.66	0.68	0.80	0.07
PARKS AND RECREATION	0.67	2.23	0.89	0.67	0.31	0.05
FINANCIAL ADMINISTRATION	3.21	5.67	2.54	2.28	2.19	4.54
GENERAL CONTROL	4.70	7.33	4.04	4.20	3.61	4.29
GENERAL PUBLIC BUILDINGS	1.20	2.69	1.04	1.15	0.86	0.13
INTEREST ON GENERAL DEBT	1.51	4.48	1.18	1.00	0.50	0.56
OTHER AND UNALLOCABLE	9.01	12.54	15.10	7.62	4.01	9.67
UTILITY REVENUE	4.57	19.69	6.35	4.28	0.85	0.56
UTILITY EXPENDITURE	5.60	16.62	9.16	9.26	0.94	0.70
DEBT OUTSTANDING AT END OF YEAR	57.67	128.02	64.93	99.56	20.73	16.67

See footnotes at end of table.

BEST COPY AVAILABLE

EXHIBIT P

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

I, MELANIE IRISH, being first duly sworn, hereby state that:

1. From February 20, 1978 to March 2, 1978, I telephoned the township officials to confirm data previously obtained from the Michigan State Boundary Commission.

2. The information being verified concerned the number of residents who actually lived in areas which city council resolutions listed in Exhbit K were proposed to be annexed from affected townships.

Further deponent sayeth not.

Melanie Irish /s/
MELANIE IRISH

Subscribed and sworn to before me
this 6th day of March, 1978.
Beverly A. Lang /s/
BEVERLY LANG, Notary Public
Ingham County, Michigan
My Commission expires: 2/3/81.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

and

CITY OF NOVI, a municipal corporation,

Appellee

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

(Continued on back cover)

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.